



Hearing members professional development



Powers and outcomes matrix

Quick reference guide

About this guide

This guide outlines and compares the powers and possible outcomes of bodies established by the Health Practitioner Regulation National Law (National Law, NSW):

- Immediate action (section 150) proceedings
- Impaired Registrants Panels
- Performance Review Panels
- Professional Standards Committees
- NSW Civil and Administrative Tribunals (NCAT)



Immediate action (section 150) proceedings – non-disciplinary

Under section 150 of the National Law (NSW), the Council may take immediate interim action to protect the health and safety of any person or otherwise in the public interest. Under these immediate action powers, the Council may suspend registration or impose conditions on registration.

Powers and possible outcomes	Membership and contribution	How proceedings are conducted	Next steps
<p>See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)</p> <ul style="list-style-type: none"> • Carrying out your powers and functions for section 150 proceedings involve three main steps: 	<p>See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)</p> <ul style="list-style-type: none"> • Section 150 proceedings must include a professional member and a community member, one of whom is nominated as the Chair for administrative purposes. 	<p>See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)</p> <ul style="list-style-type: none"> • Members may formally meet to consider the information available, or make a decision based on the documents available. The practitioner may not be present. 	<ul style="list-style-type: none"> • Prior to the end of the meeting the practitioner should be advised of their options and next steps. This may be provided by staff on the request of the Chair, or delegates

Powers and possible outcomes See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Membership and contribution See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	How proceedings are conducted See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Next steps
<ol style="list-style-type: none"> 1. Assess the allegations to determine if there are potential risks to the public or it is in the public interest to take action. Public interest includes maintaining trust and confidence in the profession. For example, when a practitioner may have been charged with a serious criminal offence which is not in the practice of the profession. 2. Collect information through questioning the practitioner to assess the factors that may mitigate or increase risks. 3. Determine if action is appropriate. And if so, determine if conditions on registration are sufficient to mitigate risks, or suspension of registration is required. <ul style="list-style-type: none"> • Section 150 proceedings are about interim action. Interim immediate action must be taken if members decide it is appropriate to do so to 	<ul style="list-style-type: none"> • Other people attending may include: <ul style="list-style-type: none"> ○ A council officer to assist the members ○ The practitioner's support person, such as a friend, lawyer and/or barrister • During proceedings, questions are usually directed to the practitioner to answer. • Witness experts or others may be asked to provide information, an opinion, records or documents, or to attend the meeting. • Professional members are appointed for their: <ul style="list-style-type: none"> ○ Knowledge and expertise of the profession ○ Understanding of the context of practice • Community members use their knowledge and expertise to consider the broader aspects such as the views of the community. 	<ul style="list-style-type: none"> • When meeting with the practitioner, the Chair would normally introduce the members and ask the practitioner to introduce their support person. Members advise the practitioner that the proceedings will be recorded. Note that section 150 proceedings are recorded (other types of proceedings are not). • Respectful discussion is expected between participants. The meeting can be adjourned for a period if the practitioner or others are distressed or demonstrating unacceptable behaviour. • Members consider the information supporting the allegations and alternative explanations available. They do this by asking the practitioner neutral, non-leading questions focused on the relevant issues. • Members do not determine the facts of the matter. They estimate the risks based on the potential level and likelihood of harm if the 	<p>may ask staff about the usual processes and inform the practitioner themselves.</p> <ul style="list-style-type: none"> • The practitioner must comply immediately with restrictions on practice even if they intend to appeal the decision. • When action is taken the complaint must be referred to the Health Care Complaints Commission (HCCC) for investigation. The HCCC may subsequently agree to the complaint being dealt with by a performance assessment or an Impaired Registrant Panel. • Immediate action remains in force until removed by the Council, the complaint is finalised, or removed by the NCAT following an appeal. • Section 150 conditions can be altered or removed in section 150A or 150C reviews. These processes can only deal with section 150 conditions. They cannot alter or remove conditions imposed by other processes such as NCAT,

Powers and possible outcomes See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Membership and contribution See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	How proceedings are conducted See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Next steps
<p>protect the health and safety of any person or in the public interest.</p> <ul style="list-style-type: none"> This action may need to occur <i>prior</i> to an independent investigation or inquiry, on the basis of preliminary information. Protecting the health and safety of the public does not require that a person suffers actual harm for immediate action to be taken. Interim immediate action can also be taken if there is potential for harm to occur. This, and other issues, may also be in the public interest. For section 150 proceedings, the Council is not required to make conclusive findings of fact based on the information they have been provided with. Members may decide to take no immediate action as the likelihood of risk to public safety is low. The complaint will then be assessed, consultation with the HCCC about the management of the complaint takes place, and if necessary referred as required by law. 	<ul style="list-style-type: none"> The member who chairs: <ul style="list-style-type: none"> Is identified by the members Is usually an experienced member Facilitates the various discussion points Has an equal role in the proceedings Each member has an equal role in contributing to decision-making in relation to assessing performance, public safety and whether restrictions on practice are required. 	<p>practitioner practices or behaves as alleged.</p> <ul style="list-style-type: none"> Members should assess whether the allegations may be potentially verifiable following further assessment or investigation in the future. For example, that they are not a vexatious claim, an issue that is likely to be impossible to substantiate through any future investigation, or where the complainant has an obvious significant conflict of interest. While members are not assessing the facts, they may have to consider the robustness of the information supporting the allegations and alternate explanations. At the end of the proceedings, the practitioner and their support people go to a break room and wait for the members to make their decision (if possible). 	<p>Impaired Registrants Panels or Performance Review Panels.</p> <ul style="list-style-type: none"> Removal of section 150 conditions does not prevent conditions being imposed under another provision of the National Law (NSW).

Powers and possible outcomes See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Membership and contribution See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	How proceedings are conducted See Part 8, Subdivision 7, sections 150 to 150J of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • If action is appropriate, members have the power to: <ul style="list-style-type: none"> ○ Suspend registration ○ Impose conditions on registration • Restrictions imposed should be sufficient to protect the public and proportionate to the risk. • Conditions related to assessment, practice restrictions, supervision and monitoring may be used to minimise risks. Conditions related to health treatment or education are usually not applied at this early stage as fair conclusions have not been made about these yet. Members may provide professional advice or recommendations to the practitioner if acknowledgement by the practitioner has occurred. 			

Impaired Registrants Panels – non-disciplinary

(National Part 8 Division 4 and Part 8 Division 13 of the National Law (NSW))

When the Council and Health Care Complaints Commission (HCCC) agree that disciplinary action is not warranted, but there may be impairment, the complaint is referred to the Council's health pathway. The Impaired Registrants Panel is part of the health pathway. Following the completion of a health assessment, the Council can refer a practitioner or student to an Impaired Registrants Panel.

Powers and possible outcomes See sections 152 of the National Law (NSW)	Membership and contribution See sections 173A of the National Law (NSW)	How proceedings are conducted See sections 138, 152 and 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> The purpose of the Impaired Registrants Panel is to determine if a practitioner or a student has an impairment as defined by the National Law (NSW). Impairment may be found even when a chronic health condition is in remission, if relapse is considered likely due to the aetiology and trajectory of the disorder, or the practitioner has little insight about the disorder or the triggers and symptoms of relapse. An impairment can be a physical or mental condition, disability, or disorder including substance abuse or dependence that detrimentally affects or is likely to determinately affect a person's capacity to practise the profession and for a student's capacity to undertake clinical training. 	<ul style="list-style-type: none"> The panel consists of at least two members, one of whom is a member of the profession (and from the same division) and one must be a medical practitioner. The member who chairs: <ul style="list-style-type: none"> Is identified by the members Facilitates the various discussion points Has an equal role in the proceedings The practitioner or student may bring a support person and also a lawyer or union officer. A council officer attends to assist members. Questions are usually directed to the practitioner or student. 	<ul style="list-style-type: none"> Proceedings are non-disciplinary, confidential, and not open to the public. Unlike section 150 proceedings, the Panel is not recorded. The primary role of all members is to assess the level of impairment and the risk to health and safety. You do this by asking questions that are non-leading and neutral, and that help you make a fair conclusion about the practitioner's impairment. Respectful discussion is expected between participants. The meeting can be adjourned for a period if the practitioner or others are distressed or demonstrating unacceptable behaviour. 	<ul style="list-style-type: none"> Prior to the end of the meeting the practitioner should be advised of their options and next steps. While the health pathway aims to return impaired practitioners to unrestricted practice and full health, this is not always possible. Some practitioners may remain in the pathway for a number of years.

Powers and possible outcomes See sections 152 of the National Law (NSW)	Membership and contribution See sections 173A of the National Law (NSW)	How proceedings are conducted See sections 138, 152 and 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • Having a health condition or disorder is not sufficient to make a finding of impairment. The identified health issue must also be found to detrimentally affect or be likely to affect practice, or capacity to undertake clinical training. • Practitioners and students need enough insight into their health issue and need to be willing to engage and work with the Council. It's about self-care, self-monitoring and appropriate health management. If they do not have insight or are not willing to engage, the matter may end up being managed through a disciplinary pathway. • Unlike other proceedings, the members can only recommend restrictions on practice to the practitioner and the Council following a finding of impairment. Restrictions on practice can include suspension or conditions on registration. 	<ul style="list-style-type: none"> • Members may request information from other participants at the hearing if considered appropriate. • Various factors may influence the selection of the member who chairs the panel: • Professional members may be more suitable because of an understanding of the clinical context in which the practitioner is working. • A member may have met the practitioner at previous panel and be familiar with the practitioner or student and the case. • In complex health cases it may be appropriate for the medical practitioner to facilitate. One member may be much more experienced than other members and take a lead role in facilitating. • Members may request information from other participants at the proceedings if considered appropriate. • Professional members: 	<ul style="list-style-type: none"> • Members meet with the practitioner or student to find out more about their current health, decide if they have an impairment, and recommend any action that needs to be taken by the Council to ensure public safety. Action may include suspension or conditions on registration. • A panel may occur in the absence of the practitioner or student using available information if they have been provided with appropriate notice of the proceedings. . Agreement to the panel recommendations by the practitioner or student must be obtained before the Council can suspend or impose conditions on registration. • Members must actively participate by asking questions and listening to responses so that the practitioner does not think only one member is making the decision. 	

Powers and possible outcomes See sections 152 of the National Law (NSW)	Membership and contribution See sections 173A of the National Law (NSW)	How proceedings are conducted See sections 138, 152 and 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • The Council must be satisfied the practitioner has agreed to the conditions before imposing the restrictions on practice. • Voluntary participation, engagement, understanding and cooperation are required of the practitioner. If the practitioner does not agree with the recommendations, the Council must deal with the matter as a complaint. • Members may determine there is no impairment when a practitioner is able to monitor and manage a health disorder appropriately by seeking timely and appropriate health treatment, self-care and taking leave when required and demonstrate insight. • Only following a finding of impairment can members recommend conditions on registration or suspension to maintain safety. • Members may provide professional guidance when behaviour and 	<ul style="list-style-type: none"> • Are appointed for their knowledge and expertise of the profession • Bring an understanding of the context in which the practitioner works and the professional standards within the profession • Medical members provide their expertise on medical matters. • All Members: • May provide brief professional guidance about standards when professional, ethical or legal standards are lower than expected due to the impairment must actively participate by asking questions and listening to responses so that the practitioner or student does not think only one member is making the decision • May also counsel and assist the practitioner or student to make a plan to improve their health and develop professionally 		

Powers and possible outcomes See sections 152 of the National Law (NSW)	Membership and contribution See sections 173A of the National Law (NSW)	How proceedings are conducted See sections 138, 152 and 176F of the National Law (NSW)	Next steps
<p>practice is considered unacceptable.</p> <ul style="list-style-type: none"> • Professional advice and counselling about standards occurs when a health matter is complex and behaviour and practice is considered not acceptable due to the impairment. • Professional counselling may be provided to assist the practitioner to develop a professional plan which: • Minimise the impact of the disorder on practice and assists the practitioner to develop professionally • If relevant leave the profession, particularly if they have a chronic relapsing disorder that is unlikely to be managed or 'cured' and has significant risks • The plan may be short, medium or long term depending on the capacity of the practitioner and progress of the health disorder • In some cases the panel can look at performance and recommend 			

Powers and possible outcomes See sections 152 of the National Law (NSW)	Membership and contribution See sections 173A of the National Law (NSW)	How proceedings are conducted See sections 138, 152 and 176F of the National Law (NSW)	Next steps
<p>conditions if it is related to the practitioner's health.</p> <ul style="list-style-type: none"> The Impaired Registrants Panel can only recommend that the practitioner be suspended or have specified conditions imposed on their registration. It does not have the power to recommend that a section 150 suspension be continued or that section 150 conditions be continued. 			

Performance Review Panels – non-disciplinary

Part 8 Division 5 Subdivision 4 Part 8 Division 14 of the National Law (NSW)

When the Council and the HCCC agree that disciplinary action is not warranted, but there may be performance issues to address, the complaint is referred to the Council's performance pathway. This pathway enables identified concerns about the performance of a practitioner to be addressed before the matter becomes serious. It is not intended to deal with serious conduct matters or where performance is significantly below expected standards.

The Performance Review Panel is part of the performance pathway. Following the completion of a performance assessment, the Council can refer a practitioner to a Performance Review Panel.

Powers and possible outcomes See sections 156 of the National Law (NSW)	Membership and contribution See section 174 of the National Law (NSW)	How proceedings are conducted See sections 138, 174, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • The purpose of the Performance Review Panel is to determine if a practitioner's professional performance is unsatisfactory as defined by the National Law (NSW). • Professional performance is unsatisfactory if it is below the standard reasonably expected of a practitioner of equivalent level of training or experience. • When members determine a practitioner's performance is unsatisfactory, they have the power to: <ul style="list-style-type: none"> ○ Impose conditions on registration 	<ul style="list-style-type: none"> • The panel consists of three members: two professional members and a community member. One of these is appointed as the Chair. • A council officer will also attend to assist the panel. • The practitioner may bring a support person, who may be a friend, family member and/or lawyer. • Questions are usually directed to the practitioner. Witnesses and others may be asked to provide information. • Professional members are appointed for their expertise and 	<ul style="list-style-type: none"> • Performance Review Panels are not open to the public, and while structured, are conducted with as little formality as possible. • Respectful discussion is expected between participants. The meeting can be adjourned for a period if the practitioner or others are distressed or demonstrating unacceptable behaviour. • Professional practice framework is used to determine whether the practitioner is currently meeting accepted standards or demonstrating unsatisfactory professional performance. • Members question the practitioner to determine the level and likelihood 	<ul style="list-style-type: none"> • Prior to the end of the meeting the practitioner should be advised of their options and next steps.

Powers and possible outcomes See sections 156 of the National Law (NSW)	Membership and contribution See section 174 of the National Law (NSW)	How proceedings are conducted See sections 138, 174, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> ○ Require the practitioner to complete education, take advice and provide reports on practice • The goal is to maintain public safety, and improve and maintain professional standards to minimise the risk of harm. • If members decide that a particular aspect of a practitioner's performance is unsatisfactory, they can impose conditions on registration, and for example, order the practitioner to complete educational courses. • Members do not have the power to suspend or cancel registration. • Members may also direct that a practitioner's performance is re-assessed at a future date and impose any other conditions they determine to be appropriate. • It is important to remember the focus of the panel is professional performance when imposing conditions. 	<p>understanding of the context of practice.</p> <ul style="list-style-type: none"> • The community member assesses the information provided in terms of community expectations of performance. • The Chair is usually the most experienced member and they facilitate the meeting. • Professional and community members work together as a team to elicit the information they need to make a decision. • Professional members help community members understand some of the technical aspects practitioners need to get right so they understand the consequences of something going wrong. They assess the technical information provided in the assessment report. • Community members often ask questions that help professional members understand how much a practitioner knows. For example, the community member may ask 	<p>of future risk to the public, and whether the practitioner has insight and responded in a professional way to the complaint.</p> <ul style="list-style-type: none"> • The members meet with the practitioner to: • Review all the relevant information the primary focus being on the areas of concern identified by the performance assessment • Hear a practitioner's submissions • Assess whether the practitioner's professional performance is satisfactory or not • Reach a decision about any further action that may be appropriate • A Panel may occur in the absence of the practitioner using available information if they have been provided with appropriate notice of the proceedings. 	

Powers and possible outcomes See sections 156 of the National Law (NSW)	Membership and contribution See section 174 of the National Law (NSW)	How proceedings are conducted See sections 138, 174, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> The panel can stop proceedings and make a complaint to the HCCC for investigation and possible prosecution. A Performance Review Panel cannot proceed if a practitioner is subject to an investigation at the HCCC, so the panel would need to cease and the referral made. Section 150 immediate action would need to be considered to protect the public while the complaint is being investigated. 	<p>the practitioner to explain things to them and the professional member can at the same time check the practitioner's knowledge.</p> <ul style="list-style-type: none"> The Chair has specific responsibilities under the law. The Chair has the power to summon witnesses, terminate a performance review, and hand down the decision of a performance review. 		

Professional Standards Committees - disciplinary

Part 8 Division 3 Subdivision 3 Part 8 Division 11 of the National Law (NSW), and schedule 5D of the National Law (NSW)

The Professional Standards Committee (PSC) is part of the Conduct Pathway. This Pathway deals with more serious matters where the Council and Health Care Complaints Commission (HCCC) agree that a complaint is referred to HCCC for formal investigation. If the investigation suggests there may be a case for unsatisfactory professional conduct or professional misconduct the matter is referred to the Director of Proceedings at the HCCC. The Director will determine whether there is prima facie evidence for referral of a complaint for prosecution by a Professional Standards Committee or the NSW Civil and Administrative Tribunal.

Powers and possible outcomes See sections 169 - 171, and Schedule 5D of the National Law (NSW)	Membership and contribution See sections 169 of the National Law (NSW)	How proceedings are conducted See sections 138, 176F, Schedule 5D (7), and sections 170 - 171 of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> The Professional Standards Committee is a separately constituted body that acts independently of Council. The purpose of a Professional Standards Committee is to determine whether a formal complaint against a practitioner can be proven to be unsatisfactory professional conduct. Unsatisfactory professional conduct is defined as: <ul style="list-style-type: none"> Conduct significantly below reasonable standards A contravention of the National Law (NSW) or NSW regulations 	<ul style="list-style-type: none"> While the Professional Standards Committees is a separately constituted body that acts independently of the Council, the Council appoints four hearing members to sit on the proceedings. The four people appointed by the Council consist of one lawyer appointed by Council who is the Chair, two professional members (one must be same registration division as practitioner), and one community member. The Chair can summon a person to appear as a witness and produce documents. 	<ul style="list-style-type: none"> Professional Standards Committees are formal, transparent and open to the public. Practitioners can be represented by legal counsel. Evidence is provided on oath. Members can summons people to give evidence, answer questions and produce documents, call expert witnesses, receive and rely on evidence from verdict judgment or findings of a court, NCAT, Professional Standards Committee, or transcript of evidence. The onus of proof is on the complainant (usually the HCCC). 	<ul style="list-style-type: none"> Decisions are usually published. However, suppression orders may apply. Members may decide not to publish certain information. Conditions on registration are provided to AHPRA. The Nursing and Midwifery Board of Australia determines what is published on the national register. Conditions on registration are usually published on the public register. Orders and health conditions are usually not published.

Powers and possible outcomes See sections 169 - 171, and Schedule 5D of the National Law (NSW)	Membership and contribution See sections 169 of the National Law (NSW)	How proceedings are conducted See sections 138, 176F, Schedule 5D (7), and sections 170 - 171 of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • A contravention of conditions of registration or an undertaking given to a National Board • 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 • Other unethical or improper behaviour • If a complaint before a Professional Standards Committee is proven, members can: 	<ul style="list-style-type: none"> • The lawyers representing the complainant and practitioner (when represented) play a significant role in the proceedings. • The practitioner can be represented by a lawyer. • The Chair must understand the laws governing the proceedings of a Professional Standards Committee. They will guide the proceedings and clarify legal issues as they arise to ensure that the principles of a protective jurisdiction and procedural fairness are met. • Community members provide the perspective of public expectations of the behaviour and performance of practitioners. They provide a perspective independent of a clinical or legal context. They take the perspective of patients and consider how the nurse or midwife's practice affects the patient. • Professional members must be registered in the same profession (and at least one in the same 	<ul style="list-style-type: none"> • It is a single hearing, usually over a number of days. It can be adjourned or postponed. • The Chair guides the proceedings. All members often directly ask a relevant question of the parties and any witnesses, though it is likely they will discuss this with the Chair beforehand. • The Professional Standards Committee is inquisitorial in nature, which means it may examine or make inquiries into all aspects of the case and not just rely on the case presented by the HCCC and the practitioner. It is not adversarial, where the responsibility for gathering evidence and 'making a case' rests with the parties involved (i.e. the prosecution and the defence). • Members must consider if they are comfortably satisfied that the particulars of a complaint have, on the balance of probabilities, been proven by the complainant. 	

Powers and possible outcomes See sections 169 - 171, and Schedule 5D of the National Law (NSW)	Membership and contribution See sections 169 of the National Law (NSW)	How proceedings are conducted See sections 138, 176F, Schedule 5D (7), and sections 170 - 171 of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • Impose conditions and orders on registration where required. • Order practitioners to: • Seek medical or psychiatric treatment or counselling • Complete educational courses • Report on their practice • Take advice in relation to the management of their practice • Members can also: • Caution or reprimand practitioners • Make orders for a non-registered practitioner that take effect when they register • Impose fines in certain circumstances • Place critical compliance conditions – failure to comply requires the Council to refer the matter to NCAT • Terminate its inquiry if it considers the matter may warrant suspension 	<p>division) as the practitioner about whom the complaint has been made. Professional members:</p> <ul style="list-style-type: none"> • Bring an understanding of the context in which the nurse or midwife works and the • Professional practice framework within the profession • Understand the relevant policies and performance required of their profession to maintain safe practice • Use this expertise to identify relevant questions in proceedings • Assist the understanding of other members • May interpret and explain the implications of some evidence • Suggest conditions that are practical and may facilitate safe practice in the workplace. 	<ul style="list-style-type: none"> • The principal question for a Professional Standards Committee is whether the conduct of a practitioner meets the definition of unsatisfactory professional conduct. If a matter arises during the course of its inquiry that is not part of the original complaint, it may also inquire into it as an additional complaint. In this case the practitioner would be advised of the additional complaint and provided with adequate time to make further submissions and responses in relation to the new complaint. • A Committee may occur in the absence of the practitioner using available information if they have been provided with appropriate notice of the proceedings. 	

Powers and possible outcomes See sections 169 - 171, and Schedule 5D of the National Law (NSW)	Membership and contribution See sections 169 of the National Law (NSW)	How proceedings are conducted See sections 138, 176F, Schedule 5D (7), and sections 170 - 171 of the National Law (NSW)	Next steps
<p>or cancellation of registration and refer the matter to NCAT</p> <ul style="list-style-type: none"> Professional Standards Committees only deal with complaints that may lead to a finding of unsatisfactory professional conduct, which is conduct significantly below a standard expected of a nurse or midwife with a similar level of training or experience, but not serious enough to warrant deregistration or suspension. The decisions of Professional Standards Committees and NCAT may have significant consequences for the nurse or midwife (or student, at NCAT only). Decisions are made on the basis that the particulars of a complaint have been proved (or not) on the balance of probabilities. 			

NSW Civil and Administrative Tribunals (NCAT) - disciplinary

Part 8 Division 3 Subdivision 6 Part 8 Division 10 and schedule 5D of the National Law (NSW)

NSW Civil and Administrative Tribunal (NCAT) is part of the Conduct Pathway. This Pathway deals with serious matters where the Council and Health Care Complaints Commission (HCCC) agree that a complaint is referred to HCCC for formal investigation. If the investigation suggests there may be a case for unsatisfactory professional conduct or professional misconduct the matter is referred to the Director of Proceedings at the HCCC who will determine referral of a complaint for prosecution by either a Professional Standards Committee or NCAT. NCAT deals with the most serious complaints that may lead to suspension, cancellation or disqualification.

Powers and possible outcomes See sections 149, 158 - 159, 165 - 166 of the National Law (NSW)	Membership and contribution See sections 165 of the National Law (NSW)	How proceedings are conducted See sections 138, 166 - 167, 176B, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> The purpose of NCAT is to determine whether a formal complaint of unsatisfactory professional conduct or professional misconduct is considered. Professional misconduct is conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration. If the complaint is proven, members can: <ul style="list-style-type: none"> Caution or reprimand practitioners or students Impose conditions on registration Order practitioner or students to: 	<ul style="list-style-type: none"> NCAT is a standing body that consists of a Chair and a number of deputy Chairs that are senior lawyers appointed by the Governor. For each proceedings, three other members are appointed by the Council – two from the same health profession (and one from the same division) as the nurse or midwife and one community person. Although the Council appoints professional and community members to NCAT, it is a separately constituted body that acts independently of the Council. The Council may monitor compliance with NCAT's decisions. The decisions of NCAT may have significant consequences for the 	<ul style="list-style-type: none"> Proceedings are formal, open to the public, transparent and non-adversarial. Its decisions are published unless it determines otherwise. Practitioners before NCAT can be represented by legal counsel. NCAT can summons people to give evidence, answer questions and produce documents, call expert witnesses, receive and rely on evidence from: verdict judgment or findings of a court, NCAT, Professional Standards Committee, or transcript of evidence. Onus of proof is on the complainant (usually the HCCC). 	<ul style="list-style-type: none"> Decisions are published. Suppression orders may apply. NCAT may decide not to publish certain information. Conditions on registration are provided to AHPRA. The Nursing and Midwifery Board of Australia determines what is published on the national register. Conditions on registration are usually published on the public register. Orders and health conditions are usually not.

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Powers and possible outcomes See sections 149, 158 - 159, 165 - 166 of the National Law (NSW)	Membership and contribution See sections 165 of the National Law (NSW)	How proceedings are conducted See sections 138, 166 - 167, 176B, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • Seek medical treatment or counselling • Complete educational courses • Report on their practice • Take advice • Suspend or cancel registration • Make orders for a non-registered practitioners that take effect when they register • Impose fines in certain circumstances • Make an order of costs • Place critical compliance conditions – failure to comply requires the Council to refer the matter to a Tribunal • Make prohibition orders • NCAT can also: • Conduct a review of a relevant order of NCAT, Performance Review Panel or Professional Standards Committees 	<p>nurse or midwife or student. Decisions are made on the basis that the particulars of a complaint have been proven (or not) on the balance of probabilities.</p> <ul style="list-style-type: none"> • The nurse or midwife can be represented by a lawyer. The Chair must understand the laws governing the proceedings of a Tribunal under the National Law (NSW). They will guide the proceedings and clarify legal issues as they arise to ensure that the principles of a protective jurisdiction and procedural fairness are met. • Community members provide the perspective of public expectations of the behaviour and performance of practitioners. They provide a perspective independent of a clinical or legal context. They take the perspective of patients and consider how the nurse or midwife's practice affects them. • Professional members must be registered in the same profession (and at least one in the same 	<ul style="list-style-type: none"> • If another complaint is made instead of or in addition to the complaint being considered it can deal with it in the same proceedings. • It is a single hearing but it can be adjourned or postponed. • The Chair guides proceedings. If the practitioner is legally represented, the lawyers representing the complainant and the practitioner or student (when represented) play a significant role in proceedings. • Members must consider if it is comfortably satisfied that the particulars of a complaint have, on the balance of probabilities, been proven by the complainant (usually the HCCC). • The Chair can summons a person to appear as a witness and produce documents. • It can also call expert witnesses. The principal question for NCAT is whether the matter before it meets 	

Powers and possible outcomes See sections 149, 158 - 159, 165 - 166 of the National Law (NSW)	Membership and contribution See sections 165 of the National Law (NSW)	How proceedings are conducted See sections 138, 166 - 167, 176B, 176F of the National Law (NSW)	Next steps
<ul style="list-style-type: none"> • Conduct an appeal of a decision of the Council, Performance Review Panel, Professional Standards Committee, and the Nursing and Midwifery Board of Australia. • The purpose of appeals is not to determine if the original decision was correct. Appeals are dealt with by rehearing fresh evidence, or evidence in addition to or in substitution of the evidence considered in the initial decision. An appeal of an NCAT decision is heard by the Supreme Court of NSW. • NCAT also considers requests for a review of conditions and orders imposed by Performance Review Panels, Professional Standards Committees, NCAT and NCAT Chairs, including suspension, cancellation and disqualification of registration, unless another adjudication body was specified as the appropriate review body at the time the initial decision was made. 	<p>division) as the practitioner about whom the complaint has been made.</p> <ul style="list-style-type: none"> • Professional members bring an understanding of the context in which the practitioner works and the professional standards within the profession. They understand the relevant policies and performance required of their profession to maintain safe practice. They use this expertise to identify relevant questions during proceedings and assist the understanding of other members. They may interpret and explain the implications of some evidence and suggest conditions that are practical and may facilitate safe practice in the workplace. 	<p>the definition professional misconduct.</p> <ul style="list-style-type: none"> • If a matter arises during the course of its inquiry, it may also be investigated by NCAT as an additional complaint. In this case the practitioner or student will be advised and provided with adequate time to make further submissions and responses in relation to the new complaint. • The Tribunal may occur in the absence of the practitioner using available information if they have been provided with appropriate notice of the proceedings. 	