



Hearing members professional development



Primary roles and responsibilities

Quick reference guide

About this guide

This guide summarises the primary roles and responsibilities of hearing members appointed by the Nursing and Midwifery Council of NSW (the Council) to sit on:

- Immediate action (section 150) proceedings
- Impaired Registrants Panels
- Performance Review Panels



Immediate action (section 150) proceedings

Role summary

The primary role of members appointed as delegates of the Council is to determine whether immediate action is appropriate to protect the safety of the public or otherwise in the public interest.

Members consider the information supporting the allegations and alternative explanations available. They do this by asking neutral, non-leading questions focused on the relevant issues. They do not determine the facts of the matter. They estimate the risks based on the potential level and likelihood of harm if the practitioner practices or behaves as alleged.

Each member has an equal role in assessing the risk and deciding if immediate action needs to be taken to assure public safety.

Key responsibilities

- Remember that you only have the powers and functions that are given to you by the Health Practitioner Regulation National Law (NSW) (National Law (NSW)). Ask yourself, “What are my powers and functions within the context of section 150 proceedings?”
- Request assistance from the council officer in relation to questions about the National Law (NSW) or Council processes with which you may be unfamiliar.

Preparation ahead of proceedings

- Read all background material thoroughly, check documentation and determine any other documents or information that needs to be tabled and available at proceedings. This is so everyone has the same information when they come to the table, including the practitioner who should have also read all background information prior. You may have less time to prepare for section 150 proceedings than other proceedings.
- When preparing, develop questions that may identify factors which may mitigate or increase the risks. Think about risks and identify questions to ask the practitioner.

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- Do not read information about the practitioner from sources other than the documents provided as this can be a source of bias. For example, you can't make contact with a witness, or do your own web research. You are not investigating and may be required to remove yourself as a member if you have received information from other sources.
- Identify any conflict of interest to avoid cancellation of the proceedings.
- Keep all information about the practitioner and the details of the case confidential.
- Keep an open mind and be careful not to make any decisions prior to proceedings starting. You can get a completely different picture once proceedings have started.

Pre-meeting on day of proceedings

- On the day of the proceedings, attend a pre-meeting with the other members to discuss and decide upon an approach for proceedings such as:
 - a) The priorities and key issues
 - b) Any clarifications they need from the practitioner
 - c) Questions to ask, or question areas to explore and clarify
 - d) An agenda including the order of question areas, and the lead for each area
 - e) Managing the practitioner - for example, keeping the practitioner on track to answer the questions posed or taking account of any other factors such as health issues
 - f) Who will be chairing the proceedings
 - g) Who will be preparing the draft decision so that member is ready to take their own detailed notes

During proceedings

- The member who chairs the proceedings reads the introductory statement, opens questioning and hands over to other members to start asking questions.
- The Chair normally introduces the members and asks the practitioner to introduce their support person. The Chair also advises that proceedings will be recorded. Note that other types of proceedings are not recorded.
- Ask helpful, neutral and non-leading questions and be careful about giving information - making a statement may indicate you have already made up your mind.
- Be careful not to suggest answers in your questioning. If you make a statement, rather than ask a question, it can give the perception of bias. Prompted or provided answers can be worthless as evidence in future proceedings. This can be difficult for professional members as they are used to suggesting and recommending strategies in their clinical role. Effective interview skills are important. Use open-ended questioning techniques if possible.
- Participants in proceedings must be treated with respect. If the practitioner becomes distressed or is not behaving in an acceptable manner, the proceedings can be adjourned for a period to allow the practitioner some space to modify their behaviour or emotions.
- Provide informal, respectful, constructive feedback or advice to a member if they are not demonstrating the behaviour, knowledge or skills expected of an appointed member. If there are significant concerns about the behaviour and standards demonstrated by the member, or the member is considered to require more support, the Executive Officer of the Council should be notified.

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At the end of proceedings

- Usually the participants are assigned to a break room while the members deliberate and make a decision, if possible.
- The council officer usually remains in the room when members are making their decision, but they cannot actively participate in the decision-making process. They may assist if there are questions about possible outcomes.
- When ready, the participants return in the room and inform the practitioner of the outcome of the proceedings.

After proceedings

- Each member is equally responsible for preparing written reasons clearly detailing why they made the decision they did, irrespective of who prepared the draft decision.
- The decision needs to be very clear on why you have imposed a suspension or conditions on registration. It is equally important to explain why a suspension or conditions were not deemed to be appropriate.
- The process can be emotionally draining. Remember to debrief with other members and perform a self-health check.
- You have a duty of care to escalate concerns about a practitioner and ensure their safety. For practitioners, the process can be very stressful. If you are concerned about the mental health of a practitioner:
 - a) Raise concerns with a council officer
 - b) Take them into a safe environment, like the break room, and check they have appropriate supports
 - c) If required, direct them to mental health helplines

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Impaired Registrants Panels

Role summary

The primary role of members is to assess whether a practitioner or student has an impairment that detrimentally affects or is likely to detrimentally affect the capacity to practice or undertake clinical training 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 finding about the practitioner or student's impairment. Each member has an equal role in assessing risk and deciding if restrictions on practice be recommended to the Council.

Key responsibilities

- Remember that you only have the powers and functions that are given to you by the National Law (NSW). Ask yourself, "What are my powers and functions within the context of Impaired Registrants Panels?"
- Request assistance from the council officer in relation to questions about the National Law (NSW) or Council processes with which you may be unfamiliar.

Preparation ahead of proceedings

- Read all the background documentation thoroughly. One of the key documents to consider is the recent Council appointed practitioner's health assessment report. Current rather than past health status is the focus for making a finding of impairment although the progress and aetiology of the health disorder is relevant.
- Identify gaps in the available information that are necessary to assist with making a determination about impairment and recommendations. Information is required about health (insight, understanding, current treatment plan, and self-care), employment (status, impact and support), clinical training, social relationships and support, and any plan to manage professional impact/development.
- Prior to the proceedings, consider questions that will assist you to make a finding and determine whether and what actions are required.
- It is not appropriate to read information about the practitioner or student from sources other than the documents provided as this can be a source of bias. You are not investigating, and you may be required to remove yourself as a member if you have received information from other sources.
- Identify any conflict of interest to avoid cancellation of the proceedings.
- Keep all information about the practitioner or student and the details of the case confidential.

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Pre-meeting on day of proceedings

- On the day of the proceedings, attend a pre-meeting with the members to discuss and decide upon an approach for proceedings such as:
 - a) The priorities and key issues
 - b) Any clarifications they need from the practitioner
 - c) Questions to ask, or question areas to explore and clarify
 - d) An agenda including the order of question areas, and the lead for each area
 - e) Managing the practitioner or student - for example, keeping the practitioner on track to answer the questions posed or taking account of any other factors
 - f) Who will be chairing the proceedings
 - g) Who will be preparing the draft report so that member is ready to take their own detailed notes

During proceedings

- The member who chairs the panel reads the introductory statement, introduces the members, and asks the practitioner to introduce their support person. The Chair opens questioning and hands over to other members to start asking questions.
- Ask helpful, non-leading and neutral questions and be careful about giving information. Making a statement may indicate you have already made up your mind.
- Be careful not to suggest answers in your questioning. If you make a statement, it can give the perception of bias. Prompted or provided answers can be worthless as evidence in future proceedings. This can be difficult for professional members as they are used to suggesting and recommending strategies in their clinical role. Effective interview skills are important. Use open-ended questioning techniques if possible.
- Participants in proceedings must be treated with respect. If the practitioner or student becomes distressed or is not behaving in an acceptable manner, the meeting can be adjourned for a period to allow the person some space to modify their behaviour or emotions.
- Provide informal, respectful, constructive feedback or advice to a member if they are not demonstrating the behaviour, knowledge or skills expected of a member. If there are significant concerns about the behaviour and standards demonstrated by the member or the member is considered to require more support, the Executive Officer of the Council should be notified.
- There is a duty of care to escalate concerns about a practitioner or student and ensure their safety. The medical member has a more important role in this, but they should confer with members and the council officer. Ask the practitioner or student questions from a clinical perspective to see if they are well enough to proceed.

At the end of proceedings

- Usually the participants are assigned a break room while the members deliberate and make a finding about the practitioner or student's impairment and if possible decide on their recommendations to the Council.

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- The council officer usually remains in the room when members are deliberating, but they cannot actively participate in the decision-making process. They may assist if there are questions about possible outcomes.
- Decide whether professional guidance is required and who is best to provide this (it is more likely to be the professional member)
- Decide how members might elicit the practitioner or student to identify a protective plan for themselves and the public that is achievable and able to be demonstrated. When ready, ask the practitioner or student to return to the room and inform them of the outcome. Agreement to the panel recommendations by the practitioner or student must be obtained before the Council can suspend or impose conditions on registration.
- The members can offer professional counselling to the practitioner or student in relation to meeting the standards of practice and about professional obligations. Provide guidance to the practitioner or student about the Council's health pathway, in particular what they need to do to manage their health and their engagement with the Council.

After proceedings

- Each member is equally responsible for preparing a report clearly detailing the Panel's assessment and why they made the recommendations they did, irrespective of who prepared the draft report.
- The report needs to be very clear on why you have recommended conditions or suspension on registration. It is equally important to explain why no conditions were recommended.
- The process can be emotionally draining. Remember to debrief with other members and perform a self-health check.
- For practitioners, the process can be very stressful. If you are concerned about the mental health of a practitioner or student:
 - a) Raise concerns with the council officer
 - b) Take them into a safe environment, like the break room, and check they have appropriate supports
 - c) If required, direct them to mental health helplines

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Performance Review Panels

Role summary

The primary role for members is to assess the risk to public safety and the practitioner's professional performance by asking questions and evaluating the answers. Questions should be helpful, neutral and non-leading. Each member has an equal role in contributing to decision-making in relation to assessing professional performance, public safety and whether conditions are required.

Key responsibilities

- Remember that you only have the powers and functions that are given to you by the National Law (NSW). Ask yourself, "What are my powers and functions within the context of Performance Review Panels?"
- Request assistance from the council officer in relation to questions about the National Law (NSW) or Council processes with which members may be unfamiliar.

Pre-meeting on day of hearing

On the day of the proceedings, attend a pre-meeting with the other members to discuss and decide upon an approach for proceedings such as:

- a) The priorities and key issues
- b) Any clarifications they need from the practitioner
- c) Questions to ask or question areas
- d) An agenda including the order of question areas, and the lead for each area
- e) Managing the practitioner - for example, keeping the practitioner on track to answer the questions posed or taking account any other factors such as health issues
- f) Who will be preparing the draft decision so that member is ready to take their own detailed notes

During proceedings

- To start proceedings, the Chair reads the introductory statement, introduces the members, and asks the practitioner to introduce their support person. The Chair opens questioning and hands over to other members to start asking questions.
- Ask helpful, neutral and non-leading questions and be careful about giving information. Making a statement may indicate you've already made up your mind.
- Be careful not to suggest answers in your questioning. If you make a statement, rather than ask a question, it can give the perception of bias. Prompted or provided answers can be worthless as evidence in future proceedings. This can be difficult for professional members as they are used to suggesting and recommending strategies in their clinical role. Effective interview skills are important. Use open-ended questioning techniques if possible.
- Participants in proceedings must be treated with respect. If the practitioner becomes distressed or is not behaving in an acceptable manner, the proceedings can be adjourned for a period to allow the practitioner some space to modify their behaviour or emotions.

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- Provide informal, respectful, constructive feedback or advice to a member if they are not demonstrating the behaviour, knowledge or skills expected of a member. If there are significant concerns about the behaviour and standards demonstrated by the member, or the member is considered to require more support, the Executive Officer of the Council should be notified.

At the end of proceedings

- Usually the participants are assigned to a break room while the members deliberate and make a decision, if possible.
- The council officer usually remains in the room when members are making their decision, but they cannot actively participate in the decision-making process. They may assist if there are questions about possible outcomes.
- Each member has an equal role in contributing to decision-making in relation to assessing professional performance, public safety and whether conditions are required.
- When ready, the participants returns to the room with their support people, and if possible the members inform the practitioner of the outcome and next steps.

After proceedings

- After the proceedings, all members are equally responsible for preparing written reasons clearly detailing why they made the decision they did, irrespective of who prepared the draft of decision.
- The process can be emotionally draining. Remember to debrief with other members and perform a self-health check.
- You have a duty of care to escalate concerns about a practitioner and ensure their safety. For practitioners, the process can be very stressful. If you are concerned about the mental health of a practitioner:
 - a) Raise concerns with a council officer
 - b) Take them into a safe environment, like the break room, and check they have appropriate supports
 - c) If required, direct them to mental health helplines