



Hearing members professional development

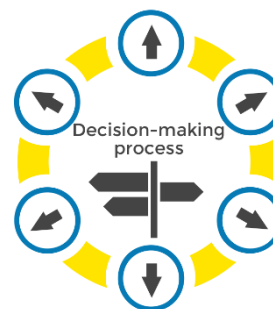


Decision-making process

Quick reference guide

About this guide

This guide outlines a structured approach to making high quality, consistent and well-reasoned decisions in your role as a hearing member. It outlines how to assess relevant information, issues of concern and level of risk, as well as determining appropriate action. It also provides a framework for collective deliberations and clearly articulating how a decision was reached in a decision document.



Preparation

Prepare for the proceedings

Each member should thoroughly review and analyse all documentation for the case ahead of the proceedings. By the day of the proceedings, you should feel confident to discuss the key issues, priorities and items for clarification.

In advance, each member should aim to prepare:

- A list of main and sub-issues they feel are applicable to the case
- Notes on likely levels of concern or risk raised by each issue
- A set of questions or key issue areas they wish to confirm or clarify further during the proceedings

What powers apply?

Refer to Module 2 – Quick Reference Guide [Powers and Outcomes Matrix](#)

What are the main issues of concern?

During preparation, and over the course of the proceedings, hearing members must:

- Identify the main issues of a case
- Establish what they know about these issues from the available documents
- Identify gaps in information and areas that require clarification or confirmation
- Consider factors that may mitigate risk or increase levels of concern relating to the:
 - notification
 - practitioner
 - scope of practice
 - practice setting

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The following issue identification matrix may help you identify the main issues of concern for a case. This relates to the case in the module and is not an exhaustive list of issues; your analysis may identify other issues in actual cases.

Area of concern to analyse	Characteristics to consider
Notification	<ul style="list-style-type: none">• Health• Conduct – ethical and legal• Performance – safe practice• Performance – record keeping• Performance – communication and collaborative practice
Practitioner	<ul style="list-style-type: none">• Registration status• Practitioner attributes• Professional integrity
practice	<ul style="list-style-type: none">• Employment status• Scope of practice
Characteristics of practice setting	<ul style="list-style-type: none">• Type of practice setting• Environmental factors

What are the sub-issues of concern?

A clear understanding of sub-issues requires:

- Identifying relevant background information, including information about the practitioner
- Analysing the information provided by the complaint or notification
- Creating a chronology of events and understanding the context in which they occurred

Consider developing notes and questions based on the sub-issues.

Assess the information

To make a sound assessment of case information, members must identify what is known and how robust each item of information is. They must also analyse where there may be information gaps.

The following questions could assist in your assessment:

What information is known?

- What information is available? For example, reports, drug test results, etc.
- What are the various perspectives of those involved? For example, the practitioner, the council-appointed practitioner (CAP) who assesses the practitioner, any treating health practitioners, the employer, or colleagues?
- What are the gaps or discrepancies?

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- What needs clarification and/or confirmation?
- Is there adequate information to make a decision?

How robust is the information?

- What type of information is it? For example, a self-report, hearsay, third party – from employer, treating practitioner, expert opinion, CAP or performance assessor.
- Is the information legitimate? For example, have dates, signatures and references been checked?
- Is the information credible? Does the information 'sound reasonable' and fit together, or are there inconsistencies, denials or different versions of an event?
- Is the information verifiable and consistent?
- Is the information objective or anecdotal? For example, are the notes a contemporary record or a statement made months after the event?
- Is there any actual or potential bias in the information?
- Who is providing the information? What is their relationship to the practitioner? What is their involvement, if any, in the events related to the initial complaint?
- Do the authors of letters of support and character references know anything about the incident and the practitioner's professional practice?
- Is a witness likely to receive some benefit if their version of events is accepted?
- Which source of information seems more robust and why?
- What weight should be given to each item of information and why?

Final preparation

Formulating a well-reasoned, preliminary set of notes and questions ahead of the proceedings will assist the panel to:

- Identify gaps or missing information
- Clarify or confirm information during the proceedings
- Make a decision and determine what actions, if any, are appropriate to recommend

Pre-meeting

Agree on the approach for the proceedings

On the day of the proceedings, attend a pre-meeting with other members to discuss the case and determine an approach for proceedings. You should agree upon a plan, including:

- The main and sub-issues to cover in the case, e.g. 'Health' and 'Performance – safe practice'
- Relevant case information to clarify with the practitioner
- Question areas regarding the issues and gaps in the case documentation
- Relevant standards, policies and protocols
- Who will chair the proceedings, prepare the draft report, and take detailed notes

Members prepare an agenda which sets out the order of question areas, and the lead member for each area.

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Proceedings

Interview the practitioner

During the proceedings, each member contributes to the interview, asking the practitioner questions from their pre-planned agenda. Ask follow-up questions if needed to clarify important details and reduce ambiguity. The chair keeps the proceedings on track, restating the main issues when necessary to bring discussion back to the key questions.

Each member takes notes during the proceedings to consult during their deliberations. You will need to reference specific detail and evidence later to support the group's reasoning and decision-making.

Clarify necessary information and detail

The proceedings continue until members are satisfied they have covered the agenda and clarified all necessary information with the practitioner. To close, the chair asks the practitioner whether he or she has further information to share, or any remaining questions.

The chair calls a break in the proceedings so members can consider the information gathered and reach a recommendation. The panel will retire to a meeting room to discuss the case.

Deliberations

Collectively deliberate to reach a decision

The chair guides members through an active discussion about the issues and information so that each member can share their thoughts on each item.

Notes are taken to capture the members' discussion, observations, reasoning and main issues of evidence. Careful consideration is given to all information.

To make a sound assessment of the information gathered, members should consider each issue separately to:

- Systematically establish the agreed facts in relation to the issues
- Identify reasons why certain information - for example, objective evidence or expert opinion - should be given more or less weight, and examine the evidence for contentious facts
- Form a conclusion about the issue - for example, whether the practitioner has a health condition that constitutes an impairment under the law, in the case of an Impaired Registrants Panel

It is the responsibility of all members to actively contribute to deliberations. Discussions should be carried out in a free, unhurried and orderly way, focusing on the main issues to be decided. Each member has the opportunity to speak.

Record notes of the deliberations

Members write notes on reasoning and the information they identified. Details of facts in contention are also noted. The notes become a valuable reference point later in the process when writing the decision document.

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Reaching consensus

Deliberation is an inclusive process of repeated analysis of the issues and evidence (i.e. an iterative process). Members keep listening, questioning, explaining and justifying until you are all comfortable with the decision.

There are no set rules about how to conduct deliberations. It may be useful to begin by asking each hearing member to discuss their thoughts on each issue. It may also be useful to take notes throughout the process that everyone can see.

It is important that consensus is reached and that each member is comfortable and agrees with the decision. If there is dissenting opinion and the panel is unable to reach consensus, you should seek advice from council support staff.

Perform a risk assessment: Agree on the risks

Members must perform a structured assessment of any risks posed to the health and safety of the public.

While individual assessment of risk may vary, members should seek to agree which factors are relevant to the risk assessment.

Identify and agree key risks that are present in the case as evidenced by credible supporting information. You should discuss and confirm the basis for your reasoning to ensure each risk is agreed and supported by clear evidence.

Perform a risk assessment: Assess relevant factors

Members must identify and consider relevant factors that may increase or mitigate any ongoing risk of harm or potential risk to public safety. Factors may relate to the characteristics of the notification, practitioner, and scope of practice or practice setting.

Examples of factors to consider are:

- Notification – what actual or potential harm arises from the issues in this notification?
- Practitioner – what characteristics of the practitioner increase or mitigate any ongoing risk of harm? For example, history, insight, remedial action
- Practice or practice setting – does this practitioner's practice setting or scope of practice increase or mitigate any ongoing risks of harm?
- Degree of deviation from accepted professional standards: How would a health practitioner of similar qualifications and experience have acted; were the risks or consequences of behaviour foreseeable
- Evidence of, or potential for, repetition of poor practice
- Risk profile for the area of practice and vulnerability of patients – level of potential harm
- Degree of oversight and protective factors within the workplace, or lack thereof
- Intention: mistake/single human error; lack of knowledge or skills; error in judgment/application; risky/reckless behaviour; deliberate or negligent harm
- Trustworthiness, motivation and insight of the practitioner
- Responsiveness and remedial activities undertaken by the practitioner.

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Perform a risk assessment: Assess the level of risk

Once the panel is confident all relevant risk factors have been identified, each member should assess the level of risk for each factor. This will assist the members to decide whether it is necessary to take action and what action may be appropriate.

You should consider both the likelihood of ongoing risk of harm and the severity of consequences. Using a structured process to assess risks helps to:

- Strengthen the quality of decision-making through open discussion and reasoning
- Allow individual assessment to be re-assessed after hearing the views of others
- Minimise the chance of issues being overlooked
- Enable practitioners and others to better understand the nature of decision-makers' concerns, improving transparency and facilitating future review via the risk assessment documentation

Should action be taken?

Following risk assessment, the members will decide whether action is necessary to maintain public safety. If action is recommended, the panel must deliberate on what action is appropriate. Determine whether conditions on registration are sufficient, or if suspension is necessary.

Suspension of a practitioner's registration, even for a small period of time, can have a significant impact on the practitioner and their professional standing. Nevertheless, a recommendation to suspend a practitioner's registration must be proposed if the panel has assessed that adequate protection for the public cannot be provided through conditions.

The members will need to determine if conditions on a practitioner's practice can adequately mitigate risks that are present.

You can work through some guiding questions to inform the deliberations:

- What behaviour needs to be modified in order to reduce the risk?
- What type of condition could minimise the likelihood or deter that behaviour?
- What regulatory action will be appropriate to maintain public protection and safety?
- How will progress and compliance be monitored?
- What are possible intended and unintended outcomes and consequences of applying the condition(s)?
- What is the group's reasoning?

Consider case context and other concerns to determine appropriate action?

Take into consideration the context of the case to determine whether recommendations for restrictions on practice are relevant, practical and feasible. In the context of impairment, this might include:

- Is a period of suspension required for safety? Or are conditions appropriate to address risks associated with concerns about:
 - Patient safety
 - Health, treatment
 - Professional performance
 - Conduct
- Or are restrictions required in the public interest?

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- Will the current severity of the health disorder or stage in treatment impact on the practitioner's ability to comply with conditions?
- Can identified risks related to performance, impairment or conduct be effectively managed and remediated through the application of conditions?
- Can conditions on practice adequately ensure that risk to patient safety is minimised?
- Can conditions on practice ameliorate other risks identified?
- Are conditions on practice pragmatic, implementable and monitorable?

The panel can also counsel the practitioner about concerns with the practitioner's health, professional standards and continuing professional development. You may also recommend the council manages the complaint through another pathway or alternative action.

What type of conditions may be appropriate?

Determining appropriate conditions to impose on a practitioner's registration is a complex task. The aim is to create conditions that protect the health and safety of the public and also allow the practitioner to practise their profession.

When generating ideas for possible conditions, suggestions may be drawn from the panel's identification of appropriate conditions within the Conditions Handbook. Others may be generated during the panel's discussion of possible methods to address specific risks.

The panel needs to assess each idea against criteria for effective conditions.

Any conditions on practice should be:

- In accordance with the principles of a protective jurisdiction (i.e. relevant and protective)
- Sufficient to mitigate the risk to public health and safety
- Necessary and relevant to the identified risks
- Feasible and practical
- Clear
- Able to be reviewed by an appropriate decision-making body
- Able to be monitored
- Transferable for the practitioner over the span of the decision

Refer to the Conditions Handbook for a full suite of conditions determined by the council to be workable and effective. You can also consult the council monitoring officer for detailed guidance and review of proposed conditions.

Close of the proceedings

The chair closes the proceedings after checking whether the practitioner would like to raise any further information or concerns. Discuss proposed condition(s) with the practitioner.

In the case of an IRP, the practitioner is asked to voluntarily agree to the recommended action, or face further action such as an immediate action proceeding.

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Decision-writing

Set out in writing the reasons for the decision

Following the proceedings, the panel collaborate to prepare the decision document.

The decision document should be drafted within two weeks of the proceedings. This ensures the final document can be reviewed and supplied to the practitioner within a month. It also enables hearing members to more accurately recall details of the proceedings and reasoning used by the panel in deliberations.

All hearing members are responsible for the quality of the final document and must take an active part in its construction and review. The document must be a clear, comprehensive and objective account of all relevant information and reasoning used by the panel to reach the final decision. You must amend and add detail where necessary to ensure the decision document:

- Is robust
- Provides adequate reasons
- Is defensible should an application for appeal occur

Ensure that all elements comply with criteria for effective decision-writing. A clearly-articulated and well-reasoned decision should:

- Use plain English principles and avoid jargon
- Use an objective and professional tone
- Use headings and structure to improve flow and understanding
- Present an unambiguous and comprehensive analysis of the decision with well supported and clear reasoning
- Summarise the issues of concern and explain why/how each item constitutes a risk to patient safety
- Identify all information to support the decision
- Set out reasons why conditions have been imposed
- State the expected performance or behaviour and specify how the practitioner's performance differs
- Identify the source of opinions, untested claims or non-verifiable information (rather than stating as facts)
- Ensure the 'voice' of the practitioner is heard (e.g. where they acknowledge or disagree with allegation or expert opinion, and where conflicting information is provided)
- Check all information is accurate (e.g. dates, spelling, grammar, sentence structure)

You should apply the following principles to help write reasoned statements of evidence:

- Avoid summarising statements, for example, 'The panel considered all of the evidence and reached the following condition ...' A well-reasoned statement of evidence must demonstrate the members understand the evidence and have applied the law.
- Avoid making judgmental statements about observations. Instead, use objective language and an impartial tone
- Use the word 'because' to help lay out your reasoning.
- Show reasons and the hearing members' process for determining the reasoning (i.e. Set out how the decision was reached. State the arguments for what was considered reasonable within the context of acceptable standards.)

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- Don't introduce information in the conclusion or conditions that hasn't been discussed in the document or that doesn't arise from the issues.

There are templates available for all types of proceedings.

The decision document for the proceedings must be able to be relied upon as a stand-alone record of the decision. It has a potential life span of five to 10 years and may be used in future hearings and decision-making.

Perform an effective review of the decision document

All members are actively responsible for the quality of the final document and must evaluate the information and reasoning contained therein. Reading of the report is not sufficient. You may wish to cross-reference it against the list of decision-writing tips and principles above.

Available resources for decision-writing

You can refer to the following sources of information to guide your decision writing.

- Begin with the council's decision document templates for the different types of proceedings. The template provides a useful guide on the structure and level of detail to include for each section.
 - 'Reasons for Decision template' for Immediate action section 150 proceedings or Performance Review Panels
 - 'IRP Report template' for Impaired Registrants Panels
- Refer to the council's Conditions Handbook, which provides information on powers, types of conditions and templates for monitorable conditions for a range of practice, health and performance contexts.

After the decision

Outcome of the proceedings

Once the conditions are imposed, the practitioner is notified that monitoring of their compliance with the conditions will commence. The council continues to monitor the practitioner's progress.