

INFORMATION FOR PARTIES TO PROFESSIONAL STANDARDS COMMITTEE INQUIRIES

1. Overview

The purpose of these notes is to briefly explain to the parties some of the processes involved in a Professional Standards Committee (PSC) Inquiry. The notes have been prepared by the Health Professional Councils Authority's Legal Team for the assistance of parties appearing before a PSC and must be read in conjunction with the applicable legislation and/or any relevant case law.

1.1 Legislation

PSCs are convened and conducted in accordance with the provisions of the *Health Practitioner Regulation National Law (NSW) No 86a*. Parties should familiarise themselves with the following parts of the Law:

Sections 3 (objectives and guiding principles) and 5 (definitions)

Part 8, Division 1

Part 8, Division 3, Subdivision 3

Part 8, Division 6, Subdivisions 1 and 4

Part 8, Division 8

Part 8, Division 11

Part 8 Division 14B

Schedule 5D

Schedule 7

2. Legal advice

It is strongly recommended that when a practitioner receives notification that a PSC is to be convened that he or she obtains legal advice from either their defence organisation or a legal adviser. Neither the staff of the Council nor the PSC members can provide legal advice to practitioners who elect to represent themselves.

3. Nature of Professional Standards Committee Inquiries

A PSC is convened to deal with a formal complaint that has been referred to it under the *National Law (NSW)*. In most circumstances this consists of a complaint against a practitioner which is prosecuted by the Health Care Complaints Commission (HCCC) acting as the nominal complainant. Although PSC members are appointed by the Council, a PSC is a separately constituted body and is independent of the Council. The hearing is a public hearing, unless all or part of it is directed to be closed by the PSC. The hearing is conducted as an Inquiry with all PSC members being free to ask relevant questions directly of the parties and any witnesses. The PSC will endeavour to ensure a proper and fair hearing is conducted in a manner that is not too overly legalistic.

A PSC can deal with a complaint and make appropriate orders even if the practitioner is no longer registered.

A PSC does not have the power to suspend or deregister a practitioner and in fact a PSC must immediately terminate an inquiry if during its course it forms the opinion that the complaint may provide grounds for suspension or deregistration. That said, in appropriate cases a PSC can make a recommendation to the responsible Tribunal that a person be suspended or deregistered on the grounds of impairment.

If a complaint before a PSC is proved, or if the practitioner admits the complaint in writing, a PSC has the power to do any one or more of the following:

- caution the practitioner;
- reprimand the practitioner;
- order medical or psychiatric treatment or counselling;
- direct that conditions be imposed on the person's registration, including critical compliance conditions;
- order a person complete educational courses;
- order that the person report on his or her medical practice;
- order that the person seek and take advice in relation to the management of his or her medical practice; and/or
- impose a fine.

In exercising any of its powers, the PSC must take into account the objectives and guiding principles of the National Law (NSW).

4. Preparation for hearing

4.1 Appointment of PSC members

The Council will appoint the four members of a PSC, who will always consist of two practitioners registered in the relevant profession and two lay persons, one of whom is an Australian lawyer and who also acts as the Chairperson.

The parties will be advised of the appointments as soon as practicable. The practitioner should advise the Council in writing as soon as possible if they consider that the appointment of a person may raise issues of bias or perceived bias so that the Council can consider the appointment. Prior to appointment the members are also asked to consider for themselves whether there might be any issue of bias or perceived bias.

4.2 Council Legal Officer's role

A designated Legal Officer of the Council will be responsible for all correspondence with the parties to a PSC and will assist the PSC members throughout the Inquiry. Any inquiries from the parties about procedural matters should be directed to that Legal Officer.

4.3 Timetable to hearing

The parties will be advised of the details of the PSC hearing as soon as practicable. The Council will also provide the parties with a timetable to prepare the matter for hearing. This timetable generally includes an initial date for the HCCC to provide the documents they seek to rely on, a subsequent date for the practitioner to provide any further documents he/she seeks to rely on, dates for the issuing of any Summonses or Notices to Produce, and a date for a directions hearing. It is expected that the timetable will be complied with to allow the matter to be properly prepared for hearing.

4.4 Summonses and Notices to Produce

Parties should approach the Council's Legal Officer if they seek to have any Summonses or Notices issued in accordance with Schedule 5D. It will assist the Chairperson or PSC member dealing with such a request if information is provided as to the relevance of the request to the Inquiry.

4.5 Provision of documents by the parties

Parties should provide the Council's Legal Officer with five copies of the documents they seek to rely on in the PSC Inquiry. (One copy will be forwarded to each PSC member and the fifth copy will be retained by the Council.) If there are more than a few documents, they should be indexed. Five copies of any subsequent documents will also need to be provided, and any indexes will need to be amended as appropriate. This preparation greatly assists all who will be present at the hearing and referring to those documents.

4.6 Directions hearing

A directions hearing will be held as a teleconference unless one or both parties indicate beforehand that a directions hearing in person would be more appropriate. (For example, if a party has objections to the contents of certain documents it may be preferable that the parties attend in person. All present can then make sure they are considering the same document.) It is expected that the PSC Chairperson, the Council's Legal Officer, the subject practitioner and/or his or her representative, and the representative of the HCCC will participate in the directions hearing.

The parties should be in a position to advise whether they have any objections to the contents of any documents provided by the other party and to discuss the basis for any such objections. The parties should be in a position to advise whether they require witnesses for cross-examination and when their own witnesses can be available to attend the Inquiry if required. The directions hearing is an opportunity to discuss exactly what matters remain in dispute between the parties and to narrow the scope of the hearing if appropriate. The Chairperson may also indicate how the PSC might be assisted in their Inquiry. Parties should be in a position to estimate/confirm the length of the hearing. One directions hearing is generally sufficient to prepare the matter for hearing. If further directions appear to be required in a matter, the parties should approach the Council's Legal Officer.

4.7 Section 164G – Requirement to provide information

Immediately prior to the PSC Inquiry the Council's Legal Officer will require information/confirmation from the subject practitioner pursuant to section 164G (typically information about where the practitioner works and where they are registered). The provision of such information assists the Council to fulfil its regulatory responsibilities, such as accurately notifying any outcome from the Inquiry, and to provide appropriate information to the Australian Health Practitioner Regulation Agency (AHPRA) to assist AHPRA to exercise its functions.

5. Professional Standards Committee hearing

5.1 Inquiry procedure

The parties are entitled to attend and be represented by an Australian Legal Practitioner or (with the leave of the Chairperson) another adviser and should feel free to seek the assistance of their lawyer or adviser at any time.

The National Law (NSW) requires a PSC to conduct proceedings on an Inquiry as it thinks fit. The PSC must accord procedural fairness to the parties, but is not required to comply strictly with the rules of evidence. Despite any representation and assistance the practitioner may have, the PSC members will expect to be able to communicate directly with the practitioner during the

Inquiry. It is generally envisaged that a practitioner's representative can best assist the Inquiry by questioning witnesses on behalf of the practitioner and by assisting in the preparation of any submissions.

In this regard, Legal representatives are expected to be familiar with the document "Guidelines regarding the use of Legal Practitioners in Proceedings before a Professional Standards Committee", which is available on the Medical Council's website.

5.2 Premises

PSC Inquiries are conducted on the premises of the Institute of Arbitrators & Mediators (IAMA) Dispute Resolution Centre at Level 9, 52 Phillip Street, Sydney.

5.3 Listing of matters and non-publication directions

On the day of the hearing, a list with hearing room details will be posted outside the IAMA. The Council also lists on its website matters to be heard before a PSC Inquiry one week before the hearing is due to commence (www.mcnsw.org.au). Matters will not be listed elsewhere in the media.

Parties and any interested members of the public should always be alert to the possibility of non-publication directions being made in relation to the practitioner's name, the subject matter of the complaint, or details of any of the witnesses in the hearing. Such non-publication directions can be made before or during a PSC hearing and it is an offence to breach any non-publication direction. If a non-publication direction is operating, a copy of the direction will be posted outside the hearing room door.

5.4 Evidence

It is expected that the subject practitioner will attend and give evidence to the Inquiry. Should the practitioner not attend, the PSC is able to proceed in their absence provided that they have been given notice. The PSC members expect to address the parties directly and are best assisted by any representative if they confine their representation to the examination and cross-examination of witnesses and to the making of any submissions.

5.5 Submissions

The parties should expect to be able to provide oral submissions at the conclusion of the PSC Inquiry unless they have previously discussed with the PSC that written submissions might be more appropriate. If written submissions are to be provided, a timetable will be set for their receipt.

The PSC is assisted if submissions are kept brief (dot point form is generally acceptable). Matters of interest to the PSC are:

- Comments on the strength or weakness of relevant evidence;
- If particulars seem to be proved and if so, whether they amount to proof of the complaint;
- Any appropriate orders;
- Whether any non-publication orders seem appropriate and on what basis;
- Whether the PSC should direct the Council not to publish the written decision on its website and on what basis;
- Who should receive a copy of the PSC's decision and on what basis.

6. Post-hearing

6.1 Written decision

The PSC will endeavour to provide a written statement of its decision as soon as possible after the oral hearing has concluded and any written submissions have been received and considered. That decision will contain reasons for the decision. It is a matter for each PSC whether it delivers its findings prior to delivering its written reasons, and it is a matter for each PSC whether they request the doctor to attend for the delivery of its decision or whether the decision will be provided in the mail. Delivery by mail is most common.

6.2 Provision of written decision

The PSC will include as part of its decision the names of who should receive a full copy of the written statement of decision. It may be that the PSC considers an appropriately worded letter with the outcome of the Inquiry be provided to someone instead of the full decision. These are matters that the parties may wish to address in their final submissions.

6.3 Publication of decision

The PSC's written decision will usually be published on the Council's website, the exception being if the PSC directs otherwise. The Council may also provide copies of the PSC's written decision to other persons as it sees fit. Any publication of the PSC's written decision is subject to any non-publication directions contained within the decision itself. It is an offence to not comply with such non-publication directions.

6.4 Appeal rights

The parties can appeal a PSC's decision to the responsible Tribunal in accordance with the provisions of sections 158 and 158A of the *National Law (NSW)*.

6.5 Right of review

The subject practitioner may apply to the appropriate review body in respect of a PSC's order that conditions be placed on their registration. The appropriate review body is the responsible Tribunal unless the PSC's order that is being reviewed nominates the Council as the appropriate review body. It is suggested that consideration in final submissions can be given as to the appropriate review body should conditions be placed on the practitioner's registration. (See Division 8 of Part 8 of the *National Law (NSW)*).

6.6 Notification of outcome of inquiry

If the complaint is proved and orders are made by the PSC, such orders are notified to AHPRA so that the outcome is recorded on the Public National Register (see www.ahpra.gov.au). Council will also notify the outcome to various relevant authorities and employers.

7. Enquiries

Enquiries from the parties should be directed to the Council's Legal Officer responsible for assisting the PSC.

Enquiries from the public should be directed to the Council's Community Relations Officer on 9879 2200.