

# Conditions Handbook

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## Introduction

Deciding on which conditions are appropriate to be imposed on the registration of a health practitioner is a complex task. The aim is to create conditions that protect the health and safety of the public and also allow the health professional to practise his/her profession.

It is also important that conditions are constructed in such a way to allow for the effective monitoring of the practitioner's ongoing compliance with them. The public is best protected if the Council can be satisfied a practitioner is demonstrating compliance with conditions and orders. The Tribunal has stated that a "condition must be drafted with precision, so that the practitioner understands the obligations placed on her or him, and its compliance capable of objective, not subjective assessment."<sup>1</sup>

Staff of the health professional Councils monitor practitioners' compliance with their conditions. They are aware of the problems that can occur when trying to monitor compliance with conditions that do not take into account the practical requirements of ongoing monitoring.

This Handbook lists the conditions (and orders) that Council staff consider workable and effective. It is a resource to assist you in the drafting of any conditions (and orders)..

The Handbook is divided into two sections – the **Explanatory Paper** and the **Template Conditions**. The **Explanatory Paper** guides you through the practical considerations relevant when drafting conditions. The **Template Conditions**, although not exhaustive, have been formulated to suit most circumstances and can be adapted as required.

Council staff are also available to discuss proposed conditions and the Council's ability to monitor them. Given the sensitive nature of the matter, discretion is assured should you seek such assistance in the course of a hearing. If required, such a discussion can be conducted as a hypothetical.

The Handbook will be updated from time to time. It is recommended that you refer to the online version, or contact the relevant staff for an up-to-date version.

Please [contact Council staff](#) if you would like any assistance or if you would like to provide any suggestions or amendments to this Handbook.

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<sup>1</sup> Paragraph 133 of *Health Care Complaints Commission v Perceval* [2014] NSWCATOD 38

# Overview of the process of imposing conditions and orders

## 1. POWERS

### 1.1 Power to impose a condition or make a particular order

The powers you have depend on the nature of the proceedings you are conducting and are set out in the [Health Practitioner Regulation National Law \(NSW\) \("the Law"\)](#).

[Table 1](#) summarises those powers for ease of reference, however decision-makers should refer back to the provisions of the Law, because powers are qualified in some instances.

#### 1.1.1 Power to make recommendation

[Table 1](#) also summarises those instances where the ability to make a recommendation is explicitly provided for in the Law. (Of course, it is open to a decision-maker to make a variety of recommendations or observations, for the consideration of the Council or other bodies, even if the ability to do so is not explicitly provided for in the Law). In these circumstances, these recommendations are helpful pointers to guide the Council or a practitioner.

### 1.2 Differentiating between conditions and orders

- Refer to [HPCA Legal Practice Note 1 – Conditions and Orders \(March 2014\)](#).
- A condition makes a practitioner's or student's registration conditional on compliance with the condition. An order requires him/her to do a specific activity or task.  
If you are seeking to restrict the practitioner's registration (i.e. the way in which he/she practises his/her profession) a condition not an order is appropriate.
- Conditions will generally be recorded in the public National Register, one exception being "health" conditions (see ss [225](#) and [226](#) of the Law and [2.2 Making private conditions](#)).  
Any other order (see ss [156C\(2\)](#), [146B\(1\)](#), [148E](#), and [149A\(1\)](#)), such as an order requiring a practitioner to attend an education course, will not generally appear on the Register.
- Both orders and conditions can be the subject of an appeal.
- Conditions (and suspensions, cancellations or disqualifications of registration) can be the subject of formal review under ss [150A](#), [150C](#), [152K](#) or [163B](#) of the Law depending on the circumstances (see [4.1 Reviewability of conditions/orders](#)).
- Orders cannot be the subject of formal review hearings (see [4.1 Reviewability of conditions/orders](#)).

### 1.3 Making critical compliance conditions and/or orders

- Only Professional Standards Committees (PSC) and Tribunals may impose critical compliance conditions (or orders).

- Conditions (or orders) become critical compliance conditions when the PSC or Tribunal orders that contravention of the condition (or order) will result in the practitioner’s or student’s registration being cancelled (see ss [146B\(3\)](#) and [149A\(4\)](#) of the Law).
- The response to a proven contravention (breach) is swift and comprehensive (see ss [150\(3\)](#) and [149C\(3\)](#) of the Law and the [2009 Medical Tribunal of NSW case of Jason Martin](#) where equivalent provisions were applied). A critical compliance condition (or order) should only be imposed when you are satisfied suspension or cancellation of the practitioner’s registration is appropriate in the event of a breach.
- Note that if you intend to impose critical compliance conditions (or orders), it is most unlikely (and probably inappropriate) that every condition or order warrants being designated for critical compliance.

#### 1.4 Dealing with pre-existing conditions and/or orders

- In some circumstances you will not have the power to remove or vary a condition already on a practitioner’s registration. The origin of any such condition will dictate whether or not you have the power to review such conditions.
- **Power to remove or alter existing conditions**

| When you are sitting as:   | Do you have the power to review/alter existing conditions?  |
|--|---|
| The Council (or Council delegates) exercising powers under ss <a href="#">150</a> , <a href="#">150A</a> , or <a href="#">150C</a> | Only if you are reviewing conditions previously imposed under s 150 of the Law.   |
| An Impaired Registrants Panel (IRP)  | You can recommend that the Council remove or alter conditions imposed following a previous IRP, or under <a href="#">s 150</a> (using ss <a href="#">150F</a> and <a href="#">150I</a> of the Law) and the Council can put such recommendation into effect.<br><br><b>Note:</b> The Council’s ability to remove or alter other pre-existing conditions on your recommendation will depend on whether the Council was given the power to review these conditions when they were originally imposed (see ss <a href="#">163</a> and <a href="#">163A</a> ). |
| A Performance Review Panel (PRP)   | No (although, you could make recommendations for a subsequent review body to take into account).  |
| A PSC or Tribunal dealing with a complaint   | No (although, you could make recommendations for a subsequent review body to take into account).<br><br><b>Note:</b> If the existing conditions were imposed under <a href="#">s 150</a> and you are now dealing with a complaint resulting from the same matter, the <a href="#">s 150</a> conditions will no longer apply, as they fall away by reason of you dealing with the complaint (see <a href="#">s 150I</a> and <a href="#">s 150H</a> of the Law).  |
| A Tribunal or a Council dealing with a review application under <a href="#">s 163B</a>   | Yes, but only as set out in <a href="#">s 163A(4)</a> of the Law regarding “relevant orders” as defined in that section (i.e. suspension, cancellation, disqualification, conditions on registration).  |

| When you are sitting as:   | Do you have the power to review/alter existing conditions?  |
|--|---|
| <p>A Tribunal dealing with an appeal concerning disciplinary outcomes or dealing with an appeal concerning National Board registration decisions under <a href="#">s 175</a></p> | <p>You may only deal with any conditions under appeal.</p> <p>(Although, you could make recommendations about other pre-existing conditions for a subsequent review body to take into account)</p>  |
| <p>A Council Inquiry dealing with a complaint under <a href="#">s 148</a></p> <p>(Not applicable to Medical or Nursing &amp; Midwifery Council)</p>                              | <p>No, not under your Inquiry powers.</p> <p>But if the Council is the review body under <a href="#">s 163B</a> of the Law and the practitioner consents to, for example, alteration or removal of conditions under s 163B, the Council can deal with the conditions concurrently with the Inquiry. See also <a href="#">s 41P</a> of the Law regarding the exercise of Council functions with consent.</p> |

- If you are of the view that a current condition should remain or be reaffirmed make a comment in your written decisions. If you do not have the power to deal with pre-existing conditions, as a general principle, it is best to impose all the conditions you think are appropriate in relation to the current complaint or issue before you, regardless of whether there are pre-existing conditions on the practitioner’s registration related to the area of concern.
- If the result is superfluous or presents overlapping conditions on the practitioner’s registration, it is appropriate to make recommendations as to what pre-existing conditions should be removed or varied. The Council staff can then arrange for the matter to be considered by the appropriate review body.
- Please [contact Council staff](#) for further advice on any specific issues.

## 2. DRAFTING CONDITIONS

### 2.1 Template conditions

- Template conditions:
  - are generally capable of being monitored by the Council;
  - have been have successfully complied with by practitioners over the years;
  - have been developed in consultation with relevant organisations, for example, Medicare, Pharmaceutical Services Unit, Toxicology Unit (for Urine Drug Testing) and Concord Hospital (for Urine Ethyl Glucuronide testing); and
  - are continually reviewed in response to submissions from subject practitioners and the Councils' monitoring and legal experiences.

### 2.2 Private conditions

- Some conditions do not appear on the public national register.
- Make it clear in your written reasons if you believe the National Board should not record certain conditions in the public national register, as the National Board will generally be guided by the decision makers.
- Generally it is appropriate to keep conditions relating to the personal health of a practitioner private, unless there is a stronger public interest in making the conditions public.

Typically in such cases, the following statement appears on the register: "*Registration is subject to conditions that relate to personal health. These conditions are not publicly available due to privacy considerations.*"

**Note:** It has been a long-standing policy not to provide third parties with details of health conditions unless special circumstances apply. If you consider it necessary that a third party be aware of a practitioner's health conditions, please explain the reasons for this in your written decision (e.g. for monitoring purposes).

- Be aware that while [s 225](#) of the Law stipulates what information must be recorded on the register, [s 226](#) allows the National Board to decide not to record certain information in the public register (including for reasons of impairment). Ultimately what information is recorded in the national register is a matter to be determined by the relevant National Board.

### 2.3 Incorporating policies or protocols into conditions

- Where applicable, you are strongly encouraged to incorporate relevant policy or protocol into your conditions and orders. It can save you a lot of detailed drafting; promotes consistency and greatly assists the Council and the practitioner in ensuring compliance. The Template Conditions have been drafted with this in mind.

- The **Template Conditions** section includes links to relevant policies, position statements, guidelines or protocols which are referred to in some conditions. Copies are also available on the HPCA or Councils' websites.
- Contravention of a policy or protocol can amount to a breach of a condition or an order (if it has been incorporated into the condition or order), and in turn may be deemed unsatisfactory professional conduct (see [sub-ss 139B\(1\)\(c\) and \(d\)](#) of the Law).

#### **2.4 Written reasons for imposing conditions and/or orders**

- If you have explained the "why", the subject practitioner is more likely to understand the need for the condition/order which may lead to greater compliance.
- The written reasons for imposing each condition or order should also include references to the evidence upon which you have relied.
- The Council will look to your written decision for guidance in any decision concerning the ongoing monitoring of the practitioner's compliance with any imposed conditions and/or orders.
- Any subsequent review body, usually the Council, will also look to your written decision for guidance.

#### **2.5 Determining whether or not other parties are informed**

- Most conditions are recorded in the public Register. This is regardless of whether the decision that imposed the conditions is made publicly available, or whether the relevant hearing or proceedings were open to the public. Private or "health" conditions generally are not recorded in the public Register (see [2.2 Making private conditions](#)).
- A third party may need to be provided with a copy of your written decision, or your conditions and/or orders, in order to be suitably informed and in a position to assist the Council in its monitoring activities. Examples include supervisors and treating practitioners. If a third party is to be provided with a copy of your written decision, consider:
  - ordering the third party to be provided with your written decision and/or your conditions/orders (see [Table 2](#)); and
  - including a condition that the subject practitioner/student is to ensure that he/she provides a copy of the conditions and/or decision to the relevant individual/s, and provides evidence to the Council that this has occurred (see [Notification and Monitoring conditions A and B](#)).
- Certain decision making bodies have specific statutory responsibilities to release a written decision (see [Table 2](#)). In circumstances for which the written decision will not be routinely published, you may decide to impose an order that your written decision or condition/orders are to be provided to a specified third party.

- It is important to consider whether the disclosure of otherwise confidential information is warranted for the protection of the health and safety of the public and is lawful. The [Legal Team can assist](#) with enquires of this nature.



### **3. EFFECTIVENESS OF CONDITIONS**

#### **3.1 Ensuring conditions are clearly understood by the public**

- Employers and members of the public are actively encouraged to check the public registers of practitioners.
- Avoid using ambiguous or undefined terms wherever possible (see the Australian Health Practitioner Regulation Agency's [Glossary of Terms in the Register](#)).
- Refer to "the practitioner" in each condition (although not by name, remembering that the conditions can only be accessed through the practitioner's individual register entry.) Also, avoid terms such as 'applicant', 'respondent', or 'registrant' which are not meaningful to most people reading the public register.

#### **3.2 Ensuring conditions are capable of effective monitoring**

##### **3.2.1 Workability, effect dates and timeframes**

- Include clear effect dates and allow workable and realistic timeframes. If in doubt, [contact Council staff](#) for assistance.
- A clear effect date will prevent ambiguity about whether or not a condition or order has been breached.
- Conditions and orders have immediate effect, unless otherwise stated. Allow time for necessary administrative arrangements. It can be unfair to expect a practitioner to comply immediately. For example, mentoring involves approaching a mentor and having him/her submit to an approval process by the Council which may take 21-28 days.
- If your level of concern is such that you intend that the practitioner does not practise until a condition is met, state this clearly.
- With educative orders, check that specified courses exist and are offered within the timeframe you are ordering, or ensure alternatives can be substituted (the [Council staff can assist](#) with this).
- Allow time for a practitioner to demonstrate improvement. For example, an audit may be appropriate in six months, as audits are generally intended to assess a practitioner's implementation of revised practices.

##### **3.2.2 Creating mechanisms for information exchange with third parties**

- Wherever possible, create mechanisms for the exchange of information with third parties, which assists the Council to independently verify a practitioner's compliance with conditions. Such mechanisms will enable the Council to access information to inform any review of conditions (see [4. Reviews](#)).

- Mechanisms which assist the Council include:
  - supervision;
  - drug and alcohol testing;
  - obtaining consent to access Medicare data; and
  - advising key stakeholders of the imposition of conditions (e.g. Pharmaceutical Services Unit and the Public Health Unit of the Ministry of Health, current and future employers or treating practitioners) so they are in a position to notify any concerns.

Be aware that complaints from patients who have accessed the register and are aware of conditions can also identify possible compliance issues.

- Think carefully about whether third parties (such as employers) should be included as part of any mechanism. For example, it is unusual to provide details of health conditions to employers (they are usually informed of the fact that health conditions have been imposed rather than the details of such conditions), but in some instances the need for public safety might outweigh any privacy or confidentiality considerations.
- Be aware that some conditions are typically paired with other conditions to create mechanisms that allow verification and more effective monitoring. For example:
  - If aspects of practice (e.g. prohibiting the performance of certain procedures) or patient numbers are restricted, a paired condition authorising provision of information from Medicare allows the Council to independently verify compliance with the restriction (a word of caution – to be effectively monitored, the restriction might need to match a Medicare item number);
  - If you require the practitioner to be reviewed by a Council appointed practitioner (who sends a report to the Council) it is recommended to also require the practitioner’s subsequent attendance at a review interview at the Council; or
  - A condition not to possess, supply, administer or prescribe any Schedule 8 or Schedule 4 Appendix D drugs can be strengthened by also requiring the practitioner to attend Pharmaceutical Services Unit to surrender the relevant drug authorities.

### **3.2.3 Potential impact of conditions on third parties**

- Your conditions and orders must be directed to the subject practitioner and not put any obligation onto others. It is inappropriate to require the compliance of anyone other than the subject practitioner. The Template Conditions have been drafted with this in mind.

Whilst some conditions require others to take on responsibilities (such as supervisors), affected persons are always asked by the Council if they consent to the roles before being formally approved.

- If your condition or order will place an appreciable burden on an identifiable third party, that third party must be given an opportunity to make a submission on the decision, see [s 176C](#) of the Law.
- This does not preclude you from stating in your written decision that a particular person appears to be suitable for a role envisaged by your orders or conditions, because the Council will consult with him/her before formal approval is given.

### **3.2.4 Other factors to consider**

- Draft/impose conditions that can stand alone, for example, include a specific date rather than referring to the “date of this decision”, as the date of the decision will not be part of the public Register. Also, conditions may be gradually eased or incrementally removed from the public Register, so any remaining condition/s will need to make sense in isolation.
- Ensure any critical compliance conditions are clearly identified as such (see [sub-ss 146B\(3\)-\(4\)](#) for PSCs and [sub-ss 149A\(4\)-\(5\)](#) for Tribunals).
- Ensure supervision, audit and testing conditions (e.g. UDT, CDT and EtG testing) specify who is to pay the costs. Generally it is the practitioner who bears the associated costs of complying with conditions/orders. The exception is where a Council appointed health practitioner is required to review or assess a practitioner in the Council’s health program.
- Some conditions can only be monitored by self-reporting, which may not be effective. When imposing such conditions consider the limitations of self-reporting and whether or not a similar condition which can be objectively monitored is possible.
- Avoid drafting conditions that put the Council in the position of approving a clinical aspect of the practitioner’s practice. Rather require the practitioner to demonstrate that his/her practise is in accordance with published standards, policies, or guidelines. For example, see the [Training and Education conditions A and C.](#)

## 4. REVIEWS

### 4.1 Reviewing conditions and orders

- If you are imposing conditions as a Tribunal, PSC, PRP, Council Inquiry, or the Supreme Court on appeal and you want the relevant conditions to be reviewed by the Council, you need to nominate the Council to be the “*appropriate review body*”. The appropriate review body will otherwise default to the Tribunal (see [s 163\(1\)\(c\)](#) of the Law).
  - The Council is well placed to be the appropriate review body for applications to review conditions. It has regulatory experience, and there are cost and convenience benefits for both the practitioner and the Council. Many applications for review of conditions are dealt with by the Council considering the matter “on the papers”. A review hearing can also be conducted under [s 163B](#) of the Law.
  - An application for review of a Tribunal order to cancel or suspend a practitioner’s registration (or to disqualify the practitioner from being registered) is generally referred to a differently constituted Tribunal for an Inquiry under [s 163A](#) of the Law.

**Note:** Orders are not reviewable but can be appealed. Once the order has been completed, the order is able to be lifted (see [1.2 Differentiating between conditions and orders](#)).

- If you are imposing conditions on behalf of the Council under [s 150](#), or under ss [152J](#) or [152M](#) following an IRP, the Council will automatically be able to review them under ss [150A](#), [150C](#) and [152K](#) without you needing to specifically nominate the Council as the review body.
- In accordance with the Law’s objective of workforce mobility (see [s 3](#) of the Law), you should consider including a provision which caters for a practitioner moving interstate and seeking a subsequent review of conditions. The suggested form of words for achieving this is included in the [Notification and Monitoring Conditions text box](#).

### 4.2 Self-executing conditions and orders

- Consider carefully whether you intend to impose a condition or order (e.g. a suspension order), which disappears once a period of time has passed.
- As a general rule, safety of the public is likely to be more effectively achieved if there is some reassuring monitoring activity on the expiration of a suspension or of certain conditions.
  - For example, simply requiring supervision for six months will mean the requirement for supervision will vanish despite the possibility of adverse feedback in supervision reports to the Council during the six months.
  - Equally, suspension for six months without any conditions being required on the expiration of the suspension (such as a period of supervision) may do little to demonstrate that a practitioner has learned or improved.

- Ordering conditions that are intended to operate during a period of suspension is not recommended. It is doubtful whether a Council has jurisdiction to monitor a suspended practitioner. (See [1.1.1 Power to make a recommendation](#)).

**Note:** Suspensions by Tribunals and recommendations of suspension by IRPs need to specify the period of suspension (see ss [149C](#) and [152I\(2\)\(b\)](#)), whereas suspensions under s 150 do not need a period to be specified (because reviews can be made at any time under [s 150A](#) of the Law).

- There may be merit in not specifying a condition expiry date at all, as you are operating in a protective jurisdiction. This is because the practitioner can always make a review application and ask that a condition be altered or removed (subject to [s 163B\(5\)](#) of the Law).

## 5. Template Conditions Bank

### 5.1 LIMITING PRACTICE CONDITIONS

| LIMITING PRACTICE                            |   | SUPPLEMENTARY MATERIALS / NOTES   | COMPLEMENTARY CONDITIONS   |
|--|---|---|--|
| <b>Limiting the place/nature of practice</b> |   |   | <a href="#">See also Supervision, Mentor and Counselling (to be added)</a> |
| A<br><input type="checkbox"/>                | To obtain Medical Council of NSW approval prior to changing the nature or place of <i>his/her</i> practice.   |   |  |
| B<br><input type="checkbox"/>                | To advise the Medical Council of NSW in writing at least seven days prior to changing the nature or place of <i>his/her</i> practice.   |   |  |
| C<br><input type="checkbox"/>                | To practise only in a group practice approved by the Medical Council of NSW where there are at least <b>[# of <i>registered medical/health</i>]</b> practitioners (excluding the subject practitioner):<br><br><b>[Select all that apply]</b><br><br><input type="checkbox"/> Where the patients and patient records are shared between the medical practitioners.<br><br><input type="checkbox"/> Where there is always one other registered <b>[<i>medical/health</i>]</b> practitioner on site.<br><br><input type="checkbox"/> Which is an accredited practice. |   |  |
| D<br><input type="checkbox"/>                | To practise only in a Medical Council of NSW approved <b>[describe employment setting / position]</b> .<br><br><b>For example:</b> aged care facility / hospital position / accredited teaching hospital or within its secondment network / resident medical officer position / locum positions of greater than four weeks.   |   |  |
| <b>Limiting the scope of practice</b>        |   |   | <a href="#">See also Notification and Monitoring conditions</a>            |
| E<br><input type="checkbox"/>                | Not to undertake solo medical practice.   |   |  |
| F<br><input type="checkbox"/>                | Not to undertake locum positions of less than four weeks.   | <a href="#">See also Council policy on locum positions (under revision)</a> |  |
| G<br><input type="checkbox"/>                | Not to conduct <b>[<i>home/nursing home</i>]</b> visits.  |   |  |

| LIMITING PRACTICE  |  | SUPPLEMENTARY MATERIALS / NOTES | COMPLEMENTARY CONDITIONS |
|--|--|---------------------------------|--------------------------|
| <b>Limiting hours</b><br>· Conditions limiting hours can be used to assist health impaired practitioners.  |  |                                 |                          |
| <b>H</b><br><input type="checkbox"/>   | To practise no more than [...] hours per week.   |                                 |                          |
| <b>I</b><br><input type="checkbox"/>   | To practise no more than [...] hours per week with no more than [...] hours in any 24 hour period.   |                                 |                          |
| <b>J</b><br><input type="checkbox"/>   | Not to [ <b>describe type of time-restricted practice</b> ].<br><br><b>For example:</b> participate in any on-call roster / provide after-hour services / perform night-duty / undertake over-time shifts. |                                 |                          |
| <b>K</b><br><input type="checkbox"/>   | To practise a maximum of [...] overtime <i>shift/s</i> per week in addition to standard rostered hours.  |                                 |                          |
| <b>Limiting the number of patients</b><br>· Conditions limiting patient numbers can be used to improve the quality of clinical care and conduct of the practitioner. |  |                                 |                          |
| <b>L</b><br><input type="checkbox"/>   | To treat no more than [...] patients in any one [ <b>hour / day / week</b> ].  |                                 |                          |
| <b>Limiting procedures</b><br>· Conditions limiting procedures can be used to improve the quality of clinical care of surgeons.                                      |  |                                 |                          |
| <b>M</b><br><input type="checkbox"/>   | Not to undertake [ <b>describe specific procedure/surgery</b> ].<br><br><b>For example:</b> colonoscopies.   |                                 |                          |
| <b>N</b><br><input type="checkbox"/>   | To limit <i>his/her</i> procedures to:<br><br><b>[List procedures (a) – (...)]</b>   |                                 |                          |

| LIMITING PRACTICE         |   | SUPPLEMENTARY MATERIALS / NOTES | COMPLEMENTARY CONDITIONS  |
|---------------------------|---|---------------------------------|---|
| <b>Periodic reporting</b> |   |                                 | <a href="#">See also Notification and Monitoring conditions</a> |
| <input type="checkbox"/>  | <p>Within [...] days of the end of each calendar month, <i>he/she</i> is to provide the Medical Council of NSW with a record of all <b>[type of procedure]</b> undertaken in the last month <b><i>[until such time as the Council decides these reports are no longer necessary]</i></b>. The record must include the following:</p> <p><b>[List appropriate record requirements. For example:]</b></p> <ul style="list-style-type: none"> <li>(a) the date and time of each procedure;</li> <li>(b) Medicare item number;</li> <li>(c) the patient's name;</li> <li>(d) the nature of the surgical procedure;</li> <li>(e) the place of the surgical procedure; and</li> <li>(f) any complications arising as a result of the procedure (and specifically advising of any unplanned return to theatre and/or any post-operative infection).</li> </ul> |                                 |   |
| <input type="checkbox"/>  | <p>Within [...] days of the end of each calendar month, <i>he/she</i> is to provide the Medical Council of NSW with a record of all patients seen in the last month. The report must include the following:</p> <p><b>[List appropriate record requirements. For example:]</b></p> <ul style="list-style-type: none"> <li>(a) the date and time of each consultation;</li> <li>(b) the name of the patient;</li> <li>(c) the item number of the service provided; and</li> <li>(d) any procedure performed in respect of each patient.</li> </ul>   |                                 |   |



## 5.2 PRESCRIBING CONDITIONS

- A NSW practitioner's ability to possess, supply, administer or prescribe a certain drug or category of drug (e.g. Schedule 8 drugs, or benzodiazepines) can be restricted by action taken under the:
  1. Health Practitioner Regulation National Law (NSW) ("HPRNL(NSW)"); and
  2. The Poisons and Therapeutic Goods Act and Regulation ("PTG").
- It is common for the Council to restrict a practitioner's ability to possess, supply, administer or prescribe a certain drug or category of drug (e.g. Schedule 8 or Schedule 4 Appendix D) by imposing conditions.
  - Such conditions should be imposed, where appropriate, regardless of any concurrent lack of authority under the PTG.
  - Conditions apply nationally and are generally published on the Public National Online Register.
- Pharmaceutical Services (PS) is the body responsible for the administration of the PTG.
  - It is the PTG that gives a registered medical practitioner the various authorities to possess, supply, administer or prescribe certain drugs or categories of drug.
  - The restrictions made under the PTG only apply within NSW. Councils and other decision makers under the HPRNL(NSW) need to consider imposing conditions about prescribing matters independently (even if complementary) of any previous action that may have been taken under the PTG.
- Communication between the Council and PS provides a safety net to ensure that each is aware of the practitioner's conditions relating to prescribing restrictions, and assists in the monitoring of a practitioner's compliance with conditions.

| PRESCRIBING                                    | SUPPLEMENTARY MATERIALS / NOTES  | COMPLEMENTARY CONDITIONS  |
|--|--|---|
| <b>Surrendering authority and restrictions</b> |  |   |
| <p><b>A</b></p> <input type="checkbox"/>       | <p><b>Schedule 8</b></p> <p>(a) Not to possess, supply, administer or prescribe any “drug of addiction” (Schedule 8 drug) as defined by <i>Poisons and Therapeutic Goods Act 1966</i> (NSW).</p> <p><b>Optional:</b> Not required if written evidence already exists.</p> <p>(b) To provide written evidence to the Medical Council of NSW that <i>he/she</i> has attended the offices of the Pharmaceutical Services and consented to an Order being made under the <i>Poisons and Therapeutic Goods Regulation 2008</i> to prohibit <i>him/her</i> from possessing, supplying, administering or prescribing any [<b>Schedule 8 drug/list specific S8 drug</b>] by [insert date].</p>                     | <p><a href="#">See Poisons List (15 July 2014)</a></p> <p><a href="#">See s 8 of the Poisons and Therapeutic Goods Act 1966</a></p> <p><a href="#">See cl 175 of the Poisons and Therapeutic Goods Regulation 2008</a></p> <p>For definition of supply, <a href="#">see s 4 of the Poisons and Therapeutic Goods Act 1966</a></p> <p><a href="#">See also Notification and Monitoring conditions</a></p> <p><a href="#">If the restriction is due to impairment, see the Health conditions (to be added).</a></p> |
| <p><b>B</b></p> <input type="checkbox"/>       | <p><b>Schedule 4 Appendix D</b></p> <p>(a) Not to possess, supply, administer or prescribe any substance listed in Schedule 4 Appendix D of the <i>Poisons and Therapeutic Goods Regulation 2008</i> (NSW).</p> <p><b>Optional:</b> Not required if written evidence already exists.</p> <p>(b) To provide written evidence to the Medical Council of NSW that <i>he/she</i> has attended the offices of the Pharmaceutical Services and consented to an Order being made under the <i>Poisons and Therapeutic Goods Act 1966</i> to prohibit <i>him/her</i> from possessing, supplying, administering or prescribing any [<b>Schedule 4 Appendix D drug/list specific S4D drug</b>] by [insert date].</p> | <p><a href="#">See cl 61 and Appendix D of the Poisons and Therapeutic Goods Regulation 2008</a></p> <p><a href="#">See Poisons List (February 2014)</a></p> <p><a href="#">See s 18AA of the Poisons and Therapeutic Goods Act 1966</a></p> <p>For definition of supply, <a href="#">see s 4 of the Poisons and Therapeutic Goods Act 1966</a></p> <p><a href="#">See the Health conditions (to be added)</a></p> <p><a href="#">See also Notification and Monitoring conditions</a></p>                         |
| <p><b>C</b></p> <input type="checkbox"/>       | <p>Not to possess, supply, administer or prescribe [<b>list specific drug e.g. Benzodiazepines</b>].</p>   | <p><a href="#">See the Health conditions (to be added)</a></p> <p><a href="#">See also Notification and Monitoring conditions</a></p>   |
| <p><b>D</b></p> <input type="checkbox"/>       | <p>To practise in accordance with the current Medical Council of NSW’s Guideline for self-treatment and treating relatives as notified and varied from time to time.</p>   | <p><a href="#">See Council’s Guideline for self-treatment and treating relatives</a></p>  |

| PRESCRIBING                   |  | SUPPLEMENTARY MATERIALS / NOTES | COMPLEMENTARY CONDITIONS  |
|-------------------------------|--|---------------------------------|---|
| <b>Qualified restrictions</b> |  |                                 |   |
| E<br><input type="checkbox"/> | Not to possess, supply, administer or prescribe any <b>["drug of addiction" (Schedule 8 drug) as defined by <i>Poisons and Therapeutic Goods Act 1966 (NSW)</i> / substance listed in Schedule 4 Appendix D to the <i>Poisons and Therapeutic Goods Regulation 2008 (NSW)</i>].</b> Except to prescribe on a <b>[describe type of prescribing chart e.g. medication chart/ discharge summary]</b> to a patient in a <b>[describe type of approved setting i.e. public hospital/ day surgery]</b> |                                 | Consider whether you want current and future employers to be sent a copy of the practitioner's conditions. <a href="#">See Notification and Monitoring conditions</a> |
| <b>Education courses</b>      |  |                                 | <a href="#">See the Training and Education conditions</a>   |

### 5.3 TRAINING AND EDUCATION CONDITIONS

When ordering a practitioner to undertake further training or education, consider whether you require the practitioner to:

- Attend a particular conference/seminar; or
- Demonstrate that they have satisfactorily completed a particular course.

Examples of conferences/seminars include:

- John Murtagh Update Course (General Practitioners).

Examples of courses which have an assessment component:

- Medical Ethics, Monash University
- Issues in general practice prescribing. Monash University
- Clinical Communication Programme, Cognitive Institute
- SH & FPA Certificate in Sexual Health & Reproductive Health (Doctors Course),  
Family Planning NSW

The Monitoring team can assist decision makers in finding a suitable course and advising whether a particular course or seminar is running.

| TRAINING AND EDUCATION        |   | SUPPLEMENTARY MATERIALS / NOTES  | COMPLEMENTARY CONDITIONS  |
|-------------------------------|---|--|---|
| A<br><input type="checkbox"/> | To provide the Medical Council of NSW annually with evidence of <i>his/her</i> compliance with Medical Board of Australia's Continuing Professional Development Registration Standard.  | <a href="#">See the Medical Board of Australia's Continuing Professional Development Registration Standard.</a>  |   |
| B<br><input type="checkbox"/> | <p>To complete within <b>[e.g. 6 or 12 months]</b> of <b>[insert date of decision]</b> the <b>[insert name of course/seminar]</b> organised by <b>[insert name of education/training provider]</b>.</p> <p>(a) Within <b>[insert timeframe]</b> of <b>[insert date of decision]</b> <i>he/she</i> must provide evidence to the Medical Council of NSW of <i>his/her</i> enrolment in the abovementioned course.</p> <p>(b) Within <b>[insert timeframe]</b> of completing the abovementioned course, <i>he/she</i> is to provide documentary evidence to the Council that <i>he/she</i> has satisfactorily completed the course.</p> <p>(c) To bear responsibility for any costs incurred in meeting this condition.</p> <p>In the event that the <b>[list specific course]</b> is unavailable, <i>he/she</i> must propose to the Council for approval a similar course to be undertaken in accordance with the requirements of this condition no later than <b>[date - suggestion 2 months from date of conditions]</b>.</p> | <p>The monitoring team can assist decision makers by contacting course providers to confirm course availability so that the timeframes within the conditions can be met.</p> <p><a href="#">See 3.2.1 Workability, effect dates and timeframes</a></p> |   |
| C<br><input type="checkbox"/> | <p>To provide the Medical Council of NSW within <b>[#]</b> months from <b>[insert date of decision]</b> with the following:</p> <p>(a) A summary prepared by <i>him/her</i> of the relevant legislation and guidelines on the keeping of good medical records. This summary must describe the information to be included in a patient record.</p> <p>(b) An overview of the steps <i>he/she</i> has taken to ensure that <i>he/she</i> is creating and keeping good medical records.</p> <p>(c) A copy of the records of <b>[#]</b> patients who have attended for consultation with <i>him/her</i> since the date of this decision.</p> <p><b>Optional:</b></p> <p><b>(d)</b> Any audit of <i>his/her</i> medical records subsequently conducted in accordance with any condition of <i>his/her</i> registration will include a review of those medical records to determine if they accord with the standards required.</p>   |  | <a href="#">If including option (d) – see Audit and Inspection conditions</a> |

## 5.4 COMPLEMENTARY HEALTH CARE CONDITION

| COMPLEMENTARY HEALTH CARE  | SUPPLEMENTARY MATERIALS / NOTES                                       | COMPLEMENTARY CONDITIONS  |
|--|---|---|
| <p>A</p> <p><input type="checkbox"/></p> <p>(a) To provide all patients at the time of consultation with:</p> <p>(i) A copy of the Medical Council of NSW Policy on Complementary Health Care; and</p> <p>(ii) An acknowledgement confirming the patient has received a copy of the Council policy, to be signed and dated by each patient and placed on their medical record.</p> <p>(b) To complete and forward to the Council a Patient Log within seven days of the end of each calendar month listing all patients who have been provided with a copy of the Council's Policy by <i>him/her</i> during the calendar month. The Patient Log must include:</p> <p>(i) The date and time of each consultation;</p> <p>(ii) The name of each patient; and the</p> <p>(iii) Contemporaneous signature of each patient.</p> | <p><a href="#">See Council's Policy Complementary Health Care</a></p> | <p><a href="#">Consider including an Audit and Inspection condition</a></p> |

## 5.5 AUDIT AND INSPECTION CONDITIONS

| AUDIT AND INSPECTION  |  | SUPPLEMENTARY MATERIALS / NOTES   | COMPLEMENTARY CONDITIONS |
|---|--|---|--------------------------|
| <p>Note: For audit conditions regarding non-GP specialists, please contact monitoring staff for advice.</p> |  |   |                          |
| <b>Medical Records</b>  |  |   |                          |
| <p>A</p> <p><input type="checkbox"/></p>  | <p>To submit to an audit of <i>his/her</i> medical practice, by a random selection of <i>his/her</i> medical records by a person or persons nominated by the Medical Council of NSW and:</p> <p>(a) The audit is to be held within [#] months from <b>[insert date of decision / recommencement of medical practice]</b> and subsequently as required by the Council.</p> <p>(b) The auditor(s) is to assess <i>his/her</i> compliance with good medical record keeping standards and legislative requirements <b>[and compliance with conditions (if required)]</b>.</p> <p><b>Optional:</b></p> <p>The auditor(s) should pay particular attention to:</p> <p><b>[List areas of concern e.g. prescribing, administering and recording of drugs of addiction and drugs of dependence]</b></p> <p>(c) To authorise the auditor(s) to provide the Council with a report on their findings.</p> <p>(d) To meet all costs associated with the audit(s) and any subsequent reports.</p> | <p>For standards in good medical record keeping see: <a href="#">Part 4</a> and <a href="#">Sch 2 of the Health Practitioner Regulation (New South Wales) Regulation 2010</a> and the <a href="#">NSW Health Standard – Health Care Records – Documentation and Management 2012</a></p> |                          |
| <b>Audit on completion of prescribing course</b>  |  |   |                          |
| <p>B</p> <p><input type="checkbox"/></p>  | <p>To submit to an audit of <i>his/her</i> medical practice by a person or persons nominated by the Medical Council of NSW.</p> <p>(a) The audit is to be held within [#] months of having completed the prescribing course and subsequently as required by the Council. The auditor(s) should:</p> <p>(i) Inspect medical records;</p> <p>(ii) Review <i>his/her</i> drug register; and</p> <p>(iii) Inspect <i>his/her</i> drug storage facilities.</p> <p>(b) The auditor(s) is to assess <i>his/her</i> practise with particular attention to:</p> <p><b>[List areas of concern e.g. prescribing, administering and recording of drugs of addiction and drugs of dependence, compliance with Poisons and Therapeutic Goods Act and Regulation]</b></p> <p>(c) To authorise the auditor(s) to provide the Council with a report on their findings.</p> <p>(d) To meet all costs associated with the audit(s) and any subsequent reports.</p>                                    |   |                          |

| <b>AUDIT AND INSPECTION</b><br>Note: For audit conditions regarding non-GP specialists, please contact monitoring staff for advice. |  | <b>SUPPLEMENTARY MATERIALS / NOTES</b> | <b>COMPLEMENTARY CONDITIONS</b> |
|---|--|--|---------------------------------|
| <b>Practice Audit</b>   |  |  |                                 |
| C<br><input type="checkbox"/>   | <p>To submit to an audit of <i>his/her</i> medical practice, by a person or persons nominated by the Medical Council of NSW and:</p> <p>(a) The audit is to be held within [#] months from <b>[insert date of decision / recommencement of medical practice]</b> and subsequently as required by the Council.</p> <p>(b) The auditor(s) is to examine and assess the following aspects of <i>his/her</i> practice including:</p> <p style="padding-left: 40px;"><b>[List areas of concern e.g. <i>infection control standards / history taking / physical examination / inspection of facilities</i>]</b></p> <p>(c) To authorise the auditor(s) to provide the Council with a report on their findings.</p> <p>(d) To meet all costs associated with the audit and any subsequent audits and reports.</p> |  |                                 |



## 5.6 NOTIFICATION AND MONITORING CONDITIONS

| NOTIFICATION AND MONITORING              |  | SUPPLEMENTARY MATERIALS / NOTES   |
|--|--|---|
| <b>Notifying current employers</b>       |  |   |
| <p>A</p> <p><input type="checkbox"/></p> | <p>To forward evidence to the Medical Council of NSW within 14 days of <b>[insert date]</b>, that <i>he/she</i> has provided a copy of <b>[this decision / full conditions / practice conditions]</b> to:</p> <p><b>[List intended recipients</b> i.e. Medical Director, Director of Clinical Services, Principal of practice, supervisor and the responsible senior officer in any place that <i>he/she</i> works (including any locum agencies and hospitals).]</p>  | <p>This condition can be worded so as to require the practitioner to provide different information to different parties.</p>                              |
| <b>Notifying future employers</b>        |  |   |
| <p>B</p> <p><input type="checkbox"/></p> | <p>Within 14 days of a change in the nature or place of <i>his/her</i> practice, <i>he/she</i> is to forward evidence to the Medical Council of NSW that <i>he/she</i> has provided a copy of <b>[this decision / full conditions / practice conditions]</b> to:</p> <p><b>[List intended recipients</b> i.e. Medical Director, Director of Clinical Services, Principal of practice, his/her supervisor and any other responsible senior officer in any place that <i>he/she</i> works (including any locum agencies and hospitals).]</p> | <p>This condition can be worded so as to require the practitioner to provide different information to different parties.</p>                              |
| <b>Information exchange</b>              |  |   |
| <p>C</p> <p><input type="checkbox"/></p> | <p>To authorise and consent to any exchange of information between the Medical Council of NSW and Medicare Australia <b>[and Pharmaceutical Services]</b> for the purpose of monitoring compliance with these conditions.</p>  | <p><u>For IRP:</u> This condition is already included in the text of the standard agreement. Therefore this condition is not required to be included.</p> |
| <p>D</p> <p><input type="checkbox"/></p> | <p>To authorise the Medical Council of NSW to notify current and future persons or organisations at places where <i>he/she</i> works as a medical practitioner in Australia of any issues arising in relation to compliance with these conditions.</p>   |   |

### Review body provision

When sitting as a Tribunal, PSC or PRP, include the following statement when imposing conditions where you intend the Council to be the review body, otherwise, the Tribunal is by default the review body (see [s 163 the National Law](#)).

- The Medical Council is the appropriate review body for the purposes of Part 8, Division 8 of the Health Practitioner Regulation National Law (NSW).*

### Interstate review provision

When sitting as the Tribunal, PSC or PRP, include the following to ensure practitioners who move interstate can have conditions reviewed by the Medical Board of Australia when not practising in NSW.

- Sections 125 to 127 of the Health Practitioner Regulation National Law are to apply whilst the practitioner's principal place of practice is anywhere in Australia other than in New South Wales, so that a review of these conditions can be conducted by the Medical Board of Australia.*

## 5.7 SUPERVISION CONDITIONS

| SUPERVISION  |  | SUPPLEMENTARY MATERIALS / NOTES   | COMPLEMENTARY CONDITIONS   |
|--|--|---|--|
| <b>Standard</b><br>· These conditions are to be read with the Compliance Policy – Supervision.   |  | <a href="#">Council's Compliance Policy – Supervision</a>   |  |
| <b>A</b><br><input type="checkbox"/>   | To practise under category <b>[A/B/C]</b> supervision in accordance with the Medical Council of NSW's Compliance Policy – Supervision (as varied from time to time) and as subsequently determined by the appropriate review body.   | Consider whether any further restrictions are required (see <a href="#">Information Sheet</a> and see <a href="#">Limiting Practice conditions</a> )<br><br><a href="#">Refer to 4.2 Self-executing conditions and orders.</a>                        | If Category A supervision, see <a href="#">Condition D</a>   |
| <b>B</b><br><input type="checkbox"/>   | At each meeting the practitioner is to review and discuss <i>his/her</i> practice with <i>his/her</i> approved supervisor with particular focus on:<br><br><b>[List relevant areas of concerns (a) – (...)]</b><br><br><b>For example:</b> communication issues; substance abuse; workload; clinical performance; medical record reviews; appropriate prescribing practices; patient follow-up; clinical outcomes etc.<br><br><b>Optional:</b><br>To review [#] patient records.<br>To observe the approved supervisor's <b>[consultations/practice]</b> |   | If the practitioner is required to observe his/her approved supervisor's consultations or practice see <a href="#">Observation sessions conditions (to be added)</a> |
| <b>Additional requirements</b><br>· Consider whether any further restrictions are required (see <a href="#">Information Sheet</a> and see <a href="#">Limiting Practice conditions</a> )<br>· These conditions specify additional requirements to the Compliance Policy – Supervision. |  | <a href="#">Council's Compliance Policy – Supervision</a>   |  |
| <b>C</b><br><input type="checkbox"/>   | To authorise the Medical Council of NSW to provide proposed and approved supervisors with:<br><br><b>[Select all that apply:]</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> a <b>[copy/extract/summary]</b> of <b>[any relevant decision /report]</b></li> <li><input type="checkbox"/> a copy of the private conditions on the practitioner's registration</li> <li><input type="checkbox"/> <b>[list any other required documents]</b></li> </ul>  | Consider whether non-publicly available information should be provided to the practitioner's proposed and approved supervisors.   |  |
| <b>D</b><br><input type="checkbox"/>   | Not to practise until a supervisor has been approved by the Medical Council of NSW.  | Only recommended where concern is high enough to require the practitioner to have their supervisor approved before commencing/continuing to practise.<br><br>It is the Council's view that this condition should generally be imposed for Category A. |  |

| SUPERVISION  |   | SUPPLEMENTARY MATERIALS / NOTES | COMPLEMENTARY CONDITIONS |
|--|---|---------------------------------|--------------------------|
| <p><b>Practitioners with provisional/limited registration</b></p> <p>These conditions are an option where a practitioner is currently under supervision and required to provide supervision reports to the National Board. Occasionally, these reports may assist the Council.</p> |   |                                 |                          |
| <p>E</p> <p><input type="checkbox"/></p>   | <p>To ensure that the Medical Council of NSW is provided with a copy of reports prepared for the Medical Board of Australia from the [<b>Head of Department/ Director of Clinical Training</b>] (or equivalent) every [<b>eg. three months</b>].</p>                                |                                 |                          |
| <p>F</p> <p><input type="checkbox"/></p>   | <p>To authorise the [<b>Head of Department/ Director of Clinical Training</b>] (or equivalent) to notify the Medical Council of NSW immediately if there are any concerns in relation to <i>his/her</i> [<b>compliance with any conditions/health or clinical performance</b>].</p> |                                 |                          |

## 5.8 MENTOR CONDITIONS

| MENTOR  |   | SUPPLEMENTARY MATERIALS / NOTES   | COMPLEMENTARY CONDITIONS |
|---|---|---|--------------------------|
| <b>Standard</b><br>· These conditions are to be read with the Compliance Policy – Mentor                                |   | <a href="#">Council's Compliance Policy – Mentor</a>  |                          |
| A<br><input type="checkbox"/>   | To nominate a registered experienced <b>[type of specialist]</b> to act as <i>his/her</i> professional mentor for approval by Medical Council of NSW in accordance with the Medical Council of NSW's Compliance Policy – Mentoring (as varied from time to time) and as subsequently determined by the appropriate review body.   | See also the <a href="#">Council's Mentor Approval Position Statement</a>   |                          |
| B   | At each meeting the practitioner is to include discussion of the following:<br><br><b>[List relevant areas of concerns (a) – (...)]</b><br><br><b>For example:</b> his/her personal and professional development; personal and/or medical practice issues as they arise/ initially the issues highlighted in this decision and then any personal and/or medical practice issues that may arise etc.           |   |                          |
| <b>Additional requirements</b><br>· These conditions specify additional requirements to the Compliance Policy – Mentor. |   | <a href="#">Council's Compliance Policy – Mentor</a>  |                          |
| C   | To authorise the Medical Council of NSW to provide proposed and approved mentors with:<br><br><b>[Select all that apply:]</b><br><br><input type="checkbox"/> a <b>[copy/extract/summary]</b> of <b>[any relevant decision/report]</b><br><input type="checkbox"/> a copy of the private conditions on the practitioner's registration<br><input type="checkbox"/> <b>[list any other required documents]</b> | Consider whether non-publicly available information should be provided to the practitioner's proposed and approved mentors. |                          |
| D   | To be mentored for a minimum period of <b>[time period]</b> and as subsequently determined by the Council.  |   |                          |

## **Further Resources**

- The Council staff are happy to discuss whether proposed conditions are workable.
- Given the sensitive nature of the matter, discretion is assured should you seek such assistance in the course of a hearing. Such discussions are best conducted as a hypothetical.
- Should you have any feedback, you can contact the Monitoring Team at the Medical Council of NSW on (02) 9879 2200 between 9am – 5pm Monday to Friday.

**Table 1: Power to impose a condition or make a particular order**

The powers you have depend on the nature of the proceedings you are conducting and are set out in the Law. For ease of reference the table below summarises those powers. However, as powers are qualified in some instances, references should be made back to the provisions of the Law.

|                   | <b>S150</b>   | <b>IRP</b>   | <b>Council on recommendation from IRP</b>   | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery)  | <b>PRP</b><br>Practitioners only (not students) | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br><br>Practitioners only (not students)                     | <b>Tribunal</b>   |
|-------------------|---|--|---|--|---|---|---|
| <b>Suspension</b> | Yes <a href="#">s 150(1)(a)</a><br>(practitioners and students)<br><br><i>Must</i> suspend if critical compliance order or condition contravened:<br><a href="#">s 150(3)</a> | N/A<br><br>Can only recommend practitioner or student agree to suspension for a specified period:<br><a href="#">s 152I(2)(b)</a><br><br>For students only, can recommend suspension for max. of two years in the public interest:<br><a href="#">s 152M</a> | Yes<br><br>ss <a href="#">152J</a> and <a href="#">152I(2)(b)</a><br>practitioners and students<br><br>For students only, can make written order of suspension for max. of two years in the public interest: <a href="#">s 152M</a> | N/A<br><br>Can only recommend suspension of practitioner or student for a specified period in certain circumstances:<br><a href="#">s 148G</a> | N/A   | N/A<br><br>Can only recommend suspension for a specified period in certain circumstances:<br><a href="#">s 146D</a> | Yes, for a specified period:<br><br><a href="#">s 149C(1)</a><br>practitioners<br><a href="#">s 149C(2)</a><br>students |

This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|                                       | <b>S150</b>  | <b>IRP</b>  | <b>Council on recommendation from IRP</b>   | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery)                              | <b>PRP</b><br>Practitioners only<br>(not students) | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b>  |
|---------------------------------------|--|---|---|--|--|--|--|
| <b>Conditions</b>                     | Yes<br><a href="#">s 150(1)(b)</a> practitioners<br><a href="#">s 150(1)(c)</a> students | N/A<br><br>Can only recommend practitioner or student agree to conditions:<br><a href="#">s 152I(2)(b)</a><br><br>For students only, can recommend specified condition/s be imposed for max. of two years in the public interest:<br><a href="#">s 152M</a> | Yes<br><br>ss <a href="#">152J</a> and <a href="#">152I(2)(b)</a> (practitioners and students)<br><br>For students only, can make written order imposing conditions for max. of two years in the public interest:<br><a href="#">s 152M</a> | Yes<br><br><a href="#">s 148E(1)(c)</a> practitioners<br><a href="#">s 148E(2)(b)</a> students | Yes<br><br><a href="#">s 156C(2)(a)</a>            | Yes<br><br><a href="#">s 146B(1)(b)</a>  | Yes<br><br><a href="#">s 149A(1)(b)</a> practitioners<br><a href="#">s 149A(2)(b)</a> students |
| <b>Critical Compliance Conditions</b> | N/A  | N/A   | N/A   | N/A  | N/A  | Yes<br><a href="#">s 146B(3)</a>   | Yes<br><a href="#">s 149A(4)</a>   |
| <b>Prohibition Orders</b>             | N/A  | N/A   | N/A   | N/A  | N/A  | N/A  | Yes<br><a href="#">s 149C(5)</a>   |

This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|  | <b>S150</b> | <b>IRP</b>  | <b>Council on recommendation from IRP</b>  | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery)                      | <b>PRP</b><br>Practitioners only<br>(not students) | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b>  |
|--|-------------|---|--|--|--|--|--|
| <b>Order counselling/ medical or psychological treatment</b> | N/A*        | N/A<br>Can recommend practitioner or student undertake specified counselling:<br><a href="#">s 152I(2)(a)</a><br><br><b>OR</b><br>can recommend practitioner or student agree to counselling and/or treatment condition<br><br>Can counsel practitioner or student:<br><a href="#">s 152I(2)(a)</a> | Can impose recommended counselling and/or treatment condition only if satisfied that practitioner or student has voluntarily agreed:<br><br>ss <a href="#">152J</a> and <a href="#">152I(2)(b)</a> | Yes<br><a href="#">148E(1)(d)</a> practitioners<br><a href="#">148E(2)(c)</a> students | N/A*   | Yes<br><a href="#">s 146B(1)(c)</a>  | Yes<br><a href="#">s 149A(1)(c)</a> practitioners<br><a href="#">s 149A(2)(b)</a> students |

\* A condition requiring counselling/treatment may be imposed.

\* There is nothing in the Law to preclude making informal recommendations in the decisions.



This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|  | <b>S150</b> | <b>IRP</b>                          | <b>Council on recommendation from IRP</b> | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery) | <b>PRP</b><br>Practitioners only<br>(not students)  | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b> |
|--|-------------|-------------------------------------|---|---|---|--|-----------------|
| <b>Recommend Council take appropriate action</b> | N/A*        | Yes<br><a href="#">s 152I(2)(c)</a> | N/A                                       | N/A*  | Yes, can make appropriate recommendations to Council about the practitioner<br><a href="#">s 156C(1)</a><br><br>Must recommend that Council make a complaint against practitioner in certain circumstances<br><a href="#">s 156C(3)</a> | N/A*   | N/A*            |

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\* A condition requiring skills testing may be imposed.

This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|   | <b>S150</b>  | <b>IRP</b>  | <b>Council on recommendation from IRP</b> | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery) | <b>PRP</b><br>Practitioners only<br>(not students)  | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b> |
|---|--|---|---|---|---|--|-----------------|
| <b>Order skills testing</b>                                       | N/A*<br><br>Note: a condition requiring performance assessment has no effect until Commission agrees<br><br>ss <a href="#">150(5)</a> and <a href="#">150E</a> | N/A   | N/A                                       | N/A   | May order skills testing in the form of a condition<br><br>May direct performance be re-assessed at a future date<br><br><a href="#">s 156D</a> | N/A  | N/A             |
| <b>Recommend complaint be dealt with by s 148 Council Inquiry</b> | N/A  | Yes, but only for a practitioner or student registered in a health profession <u>other than</u> medical or nursing and midwifery: ss <a href="#">152(2)(c)</a> and <a href="#">145B(1)(e)</a> | N/A                                       | N/A   | N/A   | N/A  | N/A             |

\* A condition requiring skills testing may be imposed.  
Handbook current as at 16 June 2015

This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|  | <b>S150</b> | <b>IRP</b> | <b>Council on recommendation from IRP</b> | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery)                                    | <b>PRP</b><br>Practitioners only<br>(not students) | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b>  |
|--|-------------|------------|---|--|--|--|--|
| <b>Reprimand/<br/>Caution</b>                              | N/A         | N/A        | N/A                                       | Yes<br><a href="#">s 148E(1)(a)</a><br>practitioners<br><br><a href="#">s 148E(2)(a)</a><br>students | N/A  | Yes<br><a href="#">s 146B(1)(a)</a>  | Yes<br><a href="#">s 149A(1)(a)</a><br>practitioners<br><br><a href="#">s 149A(2)(a)</a><br>students |
| <b>Order refund of fees</b>                                | N/A         | N/A        | N/A                                       | Yes<br><a href="#">s 148E(1)(b)</a><br>practitioners only  | N/A  | N/A  | N/A  |
| <b>Order educational course be completed</b>               | N/A*        | N/A        | N/A                                       | Yes<br><a href="#">s 148E(1)(e)</a><br>practitioners<br><br><a href="#">s 148E(2)(d)</a><br>students | Yes<br><a href="#">s 156C(2)(b)</a>                | Yes<br><a href="#">s 146B(1)(d)</a>  | Yes<br><a href="#">s 149A(1)(d)</a><br>practitioners<br><br><a href="#">s 149A(2)(d)</a><br>students |
| <b>Order practitioner to report on practice to Council</b> | N/A*        | N/A        | N/A                                       | Yes<br><a href="#">s 148E(1)(f)</a><br>practitioners only  | Yes<br><a href="#">s 156C(2)(c)</a>                | Yes<br><a href="#">s 146B(1)(e)</a>  | Yes<br><a href="#">s 149A(1)(e)</a><br>practitioners only  |

\* A condition may be imposed, however please consider whether such conditions are an appropriate outcome for urgent interim action under s 150.  
Handbook current as at 16 June 2015

This table is only a summary of the powers under the law. Reference should be made to the provisions of the law as powers may be qualified.

|   | <b>S150</b> | <b>IRP</b> | <b>Council on recommendation from IRP</b> | <b>Council inquiry</b><br>(N/A for medicine, nursing & midwifery) | <b>PRP</b><br>Practitioners only<br>(not students) | <b>PSC</b><br>(for medicine, nursing & midwifery only)<br>Practitioners only<br>(not students) | <b>Tribunal</b>  |
|---|-------------|------------|---|---|--|--|--|
| <b>Order practitioner to take advice re management of practice</b>            | N/A*        | N/A        | N/A                                       | Yes<br><a href="#">s 148E(1)(g)</a><br>practitioners only         | Yes<br><a href="#">s 156C(2)(d)</a>                | Yes<br><a href="#">s 146B(1)(f)</a>  | Yes<br><a href="#">s 149A(1)(f)</a><br>practitioners only  |
| <b>Fines</b>  | N/A         | N/A        | N/A                                       | Yes<br><a href="#">s 148F</a><br>practitioners only               | N/A  | Yes<br><a href="#">s 146C</a>  | Yes<br><a href="#">s 149B</a><br>practitioner only   |
| <b>Recommend to Tribunal that registration be cancelled</b>                   | N/A         | N/A        | N/A                                       | Yes, in certain circumstances:<br><a href="#">s 148G</a>          | N/A  | Yes, in certain circumstances:<br><a href="#">s 146D</a>                                       | N/A  |
| <b>Cancel registration or disqualify practitioner if no longer registered</b> | N/A         | N/A        | N/A                                       | N/A   | N/A  | N/A  | Yes<br><a href="#">s 149C(1)</a><br>practitioners<br><a href="#">s 149C(2)</a><br>students<br><a href="#">s 149C(4)</a><br><br><i>Must cancel practitioner or student's registration if critical compliance order or condition contravened:</i><br><a href="#">s 149C(3)</a> |
| <b>Award costs</b>  | N/A         | N/A        | N/A                                       | N/A   | N/A  | N/A  | Yes<br><a href="#">cl 13, Sch 5D</a>   |

\* A condition may be imposed, however please consider whether such conditions are an appropriate outcome for urgent interim action under s 150.  
Handbook current as at 16 June 2015

## **Table 2: Publishing decisions – Summaries of the relevant provisions of the Law**

The following table summarises the provisions of the Law relevant to whether written reasons may be published. Please refer back to the law as the table is a summary only, and the powers are qualified in some instances.

| Decision-maker   | Whether written reasons for the decision may be published?   |
|--|--|
| <p><b>Council (or Council delegates) conducting proceedings pursuant to ss 150, 150A or 150C</b></p> | <p>Written reasons for decision are generally not published by the Council, because the proceedings are confidential and the decision contains “protected information” (defined in <a href="#">s 214</a>) subject to confidentiality provisions: <a href="#">s 216</a></p> <p>Written reasons for decision are as a matter of course provided to the practitioner concerned and any legal representative: ss <a href="#">150(6)</a> and <a href="#">216(2)(d)</a></p> <p>Written reasons for decision may be provided to the HCCC: ss <a href="#">216(2)(b)(i)</a>, <a href="#">150D(2)</a> and <a href="#">150E(3)</a></p>  |
| <p><b>Impaired Registrants Panel (IRP)</b></p>   | <p>IRP reports are generally not published by the Council, because they are “protected reports” (defined in <a href="#">s 138</a>) and therefore subject to stringent confidentiality provisions: <a href="#">s 176F</a></p> <p>IRP reports are, as a matter of course, provided to the practitioner concerned and any legal representative.</p> <p>IRP reports may be provided to the HCCC: <a href="#">s 176F(2)(b)</a></p>  |
| <p><b>Performance Review Panel (PRP)</b></p>   | <p>PRP written statements of decision are generally not published by the Council because:</p> <ul style="list-style-type: none"> <li>(i) they contain “protected information” (defined in <a href="#">s 214</a>) prohibited from disclosure by <a href="#">s 216</a>; and</li> <li>(ii) almost certainly have the character of a protected report (defined in <a href="#">s 138</a>), because they invariably disclose the contents of a Performance Assessment Report, and are therefore subject to stringent confidentiality provisions: <a href="#">s 176F</a></li> </ul> <p>PRP written statements of decision are provided to the practitioner and any legal representative: <a href="#">s 156E(1)</a></p> <p>A PRP may make recommendations to the Council regarding disclosure of its written statement of decision, keeping in mind that the Council may provide a copy of the written statement of decision to any persons it sees fit: <a href="#">s 156E(3)</a></p> |

| Decision-maker   | Whether written reasons for the decision may be published?  |
|--|---|
| <p style="text-align: center;"><b>Professional Standards Committee (PSC)</b></p> | <p>A PSC can order that its statement of decision on inquiry not be made publicly available: <a href="#">s 171E(5)</a></p> <p>If no such order is made, a PSC’s written statement of the decision on inquiry must be made publicly available by the Council if the complaint is proved or admitted in whole or in part: <a href="#">s 171E(4)(a)</a></p> <p>If the complaint is not proved or admitted in whole or in part, the Council may nevertheless disseminate the decision if it sees fit to do so: <a href="#">s 171E(4)(b)</a>. Any publication will, however, be subject to any non-publication direction made by the PSC in accordance with <a href="#">cl 7 of Schedule 5D</a>.</p> <p>Statements of decision on inquiry must be provided to the practitioner and any legal representative, the Council and the complainant (usually the HCCC): <a href="#">s 171E(1)</a></p> <p>The PSC may also provide a copy to such persons as it sees fit: <a href="#">s 171E(3)</a></p> <p>It is open to a PSC to make recommendations to the Council regarding publication of its statement of decision on inquiry.</p> |
| <p style="text-align: center;"><b>Tribunal</b></p>                               | <p>A Tribunal can order that its written statement of decision not be made publicly available: <a href="#">s 165M(4)</a></p> <p>If no such order is made, a Tribunal’s written statement of decision must be made publicly available by the Tribunal if the complaint is proved or admitted in whole or in part: <a href="#">s 165M(4)</a></p> <p>Unless the Tribunal has ordered otherwise, if the complaint is not proved or admitted in whole or in part, the Tribunal may nevertheless disseminate the decision if it sees fit to do so: <a href="#">s 165M(3)</a></p> <p>Any publication will, however, be subject to any non-publication direction made by the Tribunal in accordance with <a href="#">cl 7 of Schedule 5D</a>.</p> <p>Statements of decision must be provided to the parties and the Council: <a href="#">s 165M(1)</a></p> <p>The Tribunal may also provide a copy to such persons as it sees fit: <a href="#">s 165M(3)</a></p>  |
| <p style="text-align: center;"><b>Council Inquiry</b></p>                        | <p>Written statements of decision are generally not published by the Council, because they contain “protected information” (defined in <a href="#">s 214</a>) subject to confidentiality provisions: <a href="#">s 216</a></p> <p>However, it is a matter for the individual Council whether a Council Inquiry decision is published. Considering the objective of the Law, Council may decide to publish depending on the educative value of the decision to the profession and community.</p> <p>Written reasons for decision must be provided to the practitioner concerned and any legal representative, the complainant, the National Board and any other person the Council thinks fit: <a href="#">s 148H(1)</a></p> <p>A copy must be provided to the HCCC if the HCCC made a submission to the Council with respect to the complaint: <a href="#">s 148H(2)</a></p>  |