Review of Part 8 of the Health Practitioner Regulation National Law (NSW)

January 2025

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1. Introduction

1.1 Background

On 1 July 2010, the National Registration and Accreditation Scheme (**NRAS**) commenced in NSW. NRAS is the national scheme for the registration and accreditation of health practitioners for which there are 15 National Boards for 16 registered health professions. The National Boards are responsible for registering health practitioners, and in other jurisdictions other than NSW, the National Boards are also responsible for dealing with complaints against registered health practitioners and registered students.

The NRAS was established in the Schedule to the Queensland Health Practitioner Regulation National Law Act 2009 (**Queensland National Law**). All States and Territories adopted or mirrored[1] the Schedule in the Queensland National Law, subject to any modifications, as a law of that jurisdiction to ensure a nationally consistent scheme. In NSW this was done via the Health Practitioner Regulation National Law (NSW) (**NSW National Law**).

While NRAS was established to create a nationally consistent registration and accreditation scheme, it was designed to allow jurisdictions to decide whether to adopt the national complaints provisions relating to health, conduct and performance or to implement their own local processes to deal with complaints. Jurisdictions that do not adopt the national complaints provisions in the Queensland National Law are known as "co-regulatory" jurisdictions. NSW is a co-regulatory jurisdiction and retains its own conduct, performance, and health processes set out mostly in Part 8 of the NSW National Law. The complaints processes in NSW involve the Health Care Complaints Commission (**HCCC**) and the 15 Health Professional Councils.

In NSW, when a complaint is received about a health practitioner, it can be dealt with by way of three different streams – health, performance, or conduct – which are detailed in Part 8 of the NSW National Law. For registered students there are two streams – health or conduct under Part 8 of the NSW National Law.

1.2 Review of Part 8 of the NSW National Law

Part 8 of the NSW National Law has been amended over the years, but it has not been substantively reviewed since 2015. To ensure that Part 8 continues to operate effectively, in 2023, the NSW Ministry of Health (**Ministry**) commenced a review of Part 8 of the NSW National Law. The focus of the review is to consider the operation of the complaints process in NSW, ensure public safety, whilst maintaining practitioner wellbeing through complaints processes.

As part of the review, in 2024, a number of preliminary changes to the NSW National Law and the Health Care Complaints Act 1993 were identified in consultation with stakeholders to streamline processes and deal with some urgent issues. That legislation

[1] Western Australia passed legislation to mirror the Schedule to the Queensland National Law. As of May 2024, Western Australia has now moved to an 'adopted laws' regime, and like NSW, will adopt changes to the Queensland National Law only after changes are tabled in Parliament and are not disallowed.

passed the NSW Parliament in May 2024[2]. This stage of the review is looking at broader issues within Part 8. To help inform the review, the Ministry established several working groups. This discussion paper has been prepared to further canvass issues with stakeholders and the broader public, and seek views on what, if any, changes are required to ensure that Part 8 and the NSW National Law continues to protect patients and the public.

1.3 Submissions

The Ministry is seeking submissions on the issues raised in this discussion paper, on any other aspect of the NSW National Law or the complaints processes for registered health practitioners and students. There is no special form for submissions. Submissions should be in writing and directed to:

Legal Unit
Legal & Regulatory Services
NSW Ministry of Health
1 Reserve Road
St Leonards NSW 2065
By email: NSWH-LegalMail@health.nsw.gov.au

The closing date for submissions is **21 March 2025**

Individuals and organisations should be aware that generally submissions may be made publicly available under the *Government Information (Public Access) Act 2009* (NSW). The Ministry, in considering its response to the submissions, may also circulate information for further comment to other interested parties or publish extracts from received submissions. If you wish for your submission (or any part of it) to remain confidential, subject to the *Government Information (Public Access) Act 2009,* please ensure that you indicate this clearly in your submission.

2. Overview of Part 8 and the complaints processes

The complaints processes in NSW which involve the Councils, the HCCC and the Civil and Administrative Tribunal of NSW (**NCAT**), are primarily set out in Part 8 of the NSW National Law and the Health Care Complaints Act 1993. Under the NSW National Law, a person can make a complaint against a health practitioner for a range of reasons[3], including that:

- the health practitioner has a criminal conviction or finding,
- the health practitioner has been guilty of unsatisfactory professional conduct or professional misconduct,
- the health practitioner is not competent to practice the profession,[4]

[2] See Health Practitioner Legislation Amendment Bill 2024
[3] Section 144 of the NSW National Law
[4] In NSW, a person is considered to be competent to practice a health profession if the person has sufficient physical capacity, mental capacity, knowledge and skill to practice the profession, and with sufficient communication skills. See section 139 of the NSW National Law.

- the health practitioner has an impairment, or
- the health practitioner is otherwise not a suitable person to hold registration in the practitioner's profession.

A complaint can be made against a student on the grounds that the student has been charged or convicted of an offence punishable by 12 months or more imprisonment, that the student has an impairment or that the student has contravened a condition of their registration, or an undertaking given by the student to a National Board.[5]

Under Part 8 of the NSW National Law, a complaint or matter is managed in one of three pathways or "streams": health, performance and conduct. The management of each of these streams by the Councils is, despite some similarities and crossovers, largely distinct:

- The conduct stream operates through Professional Standards Committee (**PSC**) hearings for the medical profession and the nursing and midwifery professions and through Council disciplinary inquiries for all professions other than medical, nursing and midwifery. The most serious matters for all professions are prosecuted by the HCCC in NCAT,
- The performance stream operates through performance assessments and performance review panels in all professions,
- The health stream operates through Impaired Registrants Panels, with conditions or suspensions being imposed (with consent) by the relevant Council, for all professions.

Another significant component of Part 8 is section 150 which gives the Councils the power to take urgent action against a health practitioner or student (collectively referred to as "health practitioners" in this paper) without first requiring a formal assessment of the health practitioner's health, conduct or performance under the relevant three streams.

The HCCC plays a major and important role in the complaints process. The HCCC is the independent public interest investigator and prosecutor of serious complaints against registered health practitioners. The HCCC prosecutes serious matters before NCAT concerning health practitioners, or before a PSC for complaints relating to unsatisfactory professional conduct for medical, nursing and midwifery practitioners.

The HCCC also plays an important role in consulting with the Health Professional Councils on the management of health, performance and lower-level conduct matters and complaints.

In other States and Territories, serious matters are prosecuted before a relevant Tribunal. For less serious matters, a Performance and Professional Standards Panel can deal with both conduct and performance matters while impairment matters are dealt with by a Health Panel.

[5] Section 144A of the NSW National Law

In relation to the NSW National Law, preliminary stakeholder consultation noted that placing practitioners into one of the three distinct streams has both advantages and disadvantages.

The separation between the health, performance and conduct streams allows for a focused approach to specific issues regarding a practitioner and allows for targeted intervention depending on the nature of the concerns. However, having three distinct streams for managing complaints can also create difficulties in managing the practitioner holistically. There can be barriers for dealing with practitioners quickly and efficiently, particularly when concerns about a practitioner's crossover between the streams, for example, the practitioner has both impairment and performance issues. These issues will be considered further in this discussion paper.

3. Matters for consideration

This discussion paper will consider the operation of the complaints process in NSW and how to ensure public safety whilst maintaining practitioner wellbeing through the complaints processes.

Key areas for consideration in this review include:

- A review of section 150 processes
- Processes to deal with complaints relating to performance
- Management of low-level complaints, including consideration of powers available across other national jurisdictions such as undertakings, and
- Options to improving the health, performance and conduct pathways to improve flexibility, efficiencies and consistencies across the Councils.

A number of other minor matters are also considered in section 7 of this paper.

It is noted that Part 8 of the NSW National Law includes processes that differ between health professions. As part of this review, consideration will be given as to how to ensure greater consistency concerning complaints handling across the professions.

In considering the issues the subject of this review, regard should be had to the guiding principles and objectives in sections 3A and 3B of the NSW National Law, in particular, that the health and safety of the public is the paramount consideration.

4. Section 150 proceedings

Overview of section 150

Usually, any action taken by a Council or another body under Part 8 of the NSW National Law only occurs after a full assessment of the practitioner's health, conduct or performance. However, to protect the public, there is a mechanism available to the Councils to impose conditions or suspend a practitioner before a full assessment has occurred.

Section 150 of the NSW National Law gives the Councils the power to suspend or impose conditions on a health practitioner's or student's registration as an interim measure. The Council must take action if the Council decides the action is appropriate to protect the health and safety of any person, or if it is otherwise in the public interest.

Section 150(1) of the NSW National Law provides:

> *A Council must, if at any time it is satisfied it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or if satisfied the action is otherwise in the public interest —*
>
> *(a) by order suspend a registered health practitioner's or student's registration; or*
>
> *(b) by order impose on a registered health practitioner's registration the conditions relating to the practitioner's practising the health profession the Council considers appropriate; or*
>
> *(c) by order impose on a student's registration the conditions the Council considers appropriate.*

A Council must also suspend a health practitioner's registration and refer the matter to NCAT if the Council is satisfied that the health practitioner has contravened a critical compliance order or condition.[6]

Section 150 is a public protection provision empowering the Council to take action without requiring proof of misconduct, an impairment, or that performance is unsatisfactory. Action under section 150 can be taken by a Council whether or not a complaint has been made or referred to the Council about a health practitioner, and whether or not proceedings in respect of a complaint are before a PSC or NCAT.[7] Rather, action must be taken if the Council is satisfied that it is appropriate to take action to protect a person or persons or that the action is otherwise in the public interest.

While the powers available to the Councils under section 150 are broad, they operate effectively only as an interim measure and are generally intended to apply in urgent circumstances. The Council must refer the matter to the HCCC for investigation within 7 days of taking action under section 150(1). However, there are circumstances in which a Council does not need to refer a matter to the HCCC, being where the Council:

- takes action because it is of the opinion that the health practitioner has an impairment, or
- imposes a condition on the health practitioner requiring them to undergo a performance assessment (however this condition has no effect unless the HCCC agrees with such a condition). [8]

Action taken by a Council under section 150(1) in the form of conditions or suspension will remain in place until the complaint is disposed of, or until the conditions or suspension are removed by the Council. Review rights exist for practitioners under Part 8. A practitioner may apply to a Council to review its decision to take action under section 150.[9] After this review, the Council may affirm or vary its decision or set aside the decision

[6] Section 150(3) of the NSW National Law; Section 138(1) of the NSW National Law
[7] Section 150(4) of the NSW National Law
[8] Section 150(5) of the NSW National Law
[9] section 150A of the NSW National Law

and take any action the Council has the power to take under section 150. There are also rights of appeal to NCAT and the Supreme Court.

Immediate action in other Australian jurisdictions

A similar provision exists in other Australian jurisdictions, under section 156 of the Queensland National Law.

However, there are some differences between section 150 of the NSW National Law and the provision in other jurisdictions:

- in other jurisdictions, action is not mandated under their immediate action powers in section 156 of the Queensland National Law. Rather, their legislation permits, but does not require, immediate action to be taken by the National Board, and
- the Queensland National Law sets out a legislative show cause process which must be engaged in by the Board before a Board can take immediate action, while in NSW the rules of procedural fairness apply, which can be more easily adapted to individual cases depending on the degree of urgency.

Issues for consideration

As noted earlier, a Council must take action under section 150(1) if it is appropriate to do so:

- for the protection of the health or safety of any person or persons (whether or not a particular person or persons), or
- it is satisfied the action is otherwise in the public interest[10].

The threshold test is designed to be two separate limbs – protection of the health or safety or any person, or action that is otherwise in the public interest. This followed on from the previous section 66 of the now repealed Medical Practice Act 1992.

The previous section 66 of the repealed Medical Practice Act 1992 initially required the then Medical Board of NSW to take immediate action if the action was "*necessary for the purpose of protecting the life or physical or mental health of any person*"[11]. However, following concerns about how section 66 had been working in practice, the Medical Practice Amendment Act 2008 amended section 66 to add the additional limb of "*or is otherwise in the public interest*". The Agreement in Principle speech to the Medical Practice Amendment Act 2008 noted that:

> *"…the bill amends section 66 of the Medical Practice Act to clarify that the actions under this section must be guided by what is needed to protect the public interest. The board is not therefore required to limit itself to the least restrictive option……Rather, the board should look to the outcome that best addresses the statutory purpose of the protection of the public or is otherwise in the public interest."*[12]

This threshold with two separate limbs was then carried over into the NSW National Law and applied to all health professions.

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[10] Section 150(1) of the Health Practitioner Regulation National Law (NSW)
[11] See historical version of the Medical Practice Act prior to 2008
[12] See Agreement in Principle speech on the Medical Practice Amendment Act 2008 at https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-70702/HANSARD-1323879322-70657

Courts have generally found that the two limbs may overlap, however the public interest test is not subsumed within the first limb of 'protection of the safety or safety of any person'.[13] However, the case of Pridgeon v Medical Council of New South Wales [2022] NSWCA 60 found that the reference to "public interest" should be understood as "*a reference to the public interest in the protection of the public's health and safety. The content to be given to that protection must take its meaning from the conduct of the practice of medicine in respect of which a medical practitioner's registration is granted*."

Pridgeon has raised some doubts as to whether or not action can be taken under section 150 to respond to concerns about a health practitioner that are not directly connected to the practice of their profession, but rather relate to the issue of confidence in the profession. In the Ministry's view, section 150 is intended to allow action to be taken in such cases where it is in the public interest to do so. Such cases should be rare, noting that the powers under section 150 are intended to be interim orders that are required to address immediate concerns that cannot wait to be fully considered as part of normal complaints processes and investigation by the HCCC.

It is noted that in 2017, amendments were made to the immediate action provisions in the Queensland National Law to better align with section 150 of the NSW National Law, by including a separate "public interest" limb[14]. As part of this, the Queensland National Law provisions was expressly amended to include an example of when action may be in the public interest as follows:

> "*A registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which immediate action is required to be taken to maintain public confidence in the provision of services by health practitioners*."

However, unlike NSW, there is no requirement for a National Board to take immediate action powers under the Queensland National Law provisions, rather a National Board has the discretion to take action.

Matters involving immediate action decisions are often complex and difficult, and a Council may not have all relevant information available to it when it makes its decision. However, if the test for the first limb is met, being that it is appropriate to take action to protect the health or safety of any person or persons, the Ministry is of the view that the Council should be required to take action, as the health and safety of the public is the paramount consideration. However, in cases involving the second limb, that the action is otherwise "in the public interest", different considerations may arise.

Determining what is in the public interest will almost always require a balancing of competing considerations. For example, if a health practitioner has been charged with a serious offence and allowing the practitioner to continue practicing will seriously undermine public confidence in the profession, whether it is appropriate in the public interest to take action will require consideration of a range of factors, including the presumption of innocence, the impact on health services within the community, as well as confidence in the profession.

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[13] See Medical Council of New South Wales v Smithson [2021] NSWCA 53, *Kirby v Dental Council of NSW* [2020] NSWCA 91, *Ghosh v Medical Council of New South Wales* [2020] NSWCA 122 and Pharmacy Council of NSW v Ibrahim [2020] NSWSC 708.

[14] See Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017. The Bill's second reading speech is at https://documents.parliament.qld.gov.au/tp/2017/5517T908.pdf

While it would be expected that these considerations are already weighed up in determining whether action would be in the public interest under section 150, the Ministry is inviting submissions on whether there is merit in amending section 150 to give Councils a discretion to take action under the second limb, being where the appropriate action is otherwise in the public interest.

Issues for consideration

1) Is the threshold test for action under section 150(1) still appropriate? If not, what changes should be made?
2) Should the Councils have a discretionary power, rather than a mandatory power, to take action under the second limb in section 150(1) when it is considered appropriate in the public interest and unconnected to health or safety of the public?
3) Are any changes required to section 150 to protect the health and safety of the public while maintaining practitioner well-being throughout the section 150 process?

5. Health, performance and conduct

5.1. The health stream

In NSW, the health pathway aims to provide a supportive framework for practitioners with an impairment to ensure public safety.

Under the NSW National Law, a person has an impairment if the person has a physical or mental impairment, disability, condition or disorder (including substance abuse), that detrimentally affects or is likely to detrimentally affect the person's ability to practice their profession or, in respect of a student, their ability to undertake clinical training.[15]

In NSW, once a complaint is initially received, the Council and the HCCC must first consult to determine the course of action to be taken in relation to the complaint. Where a complaint raises an impairment issue, if the HCCC and the Council agree that the complaint should be dealt with via the health program the Council can:

- require the practitioner to undergo an examination by a specified health practitioner at a certain time and place, or
- refer the matter to an Impaired Registrants Panel (**IRP**)[16]

Once a matter is within the health stream, it ceases to be dealt with as a complaint[17]. Under the NSW National Law, an IRP has two or three members, which must include at least one medical practitioner, and one person registered in the same profession as the practitioner. An IRP must inquire into any matter referred to it and may obtain further

[15] Section 5 of the NSW National Law
[16] Section 145B(1)(f) of the NSW National Law
[17] Section 145B(3) of the NSW National Law

reports or other information it considers appropriate or ask the practitioner to appear before the IRP to make an assessment.[18] A practitioner is entitled to make oral or written submissions to the IRP.

Following its inquiry into a matter, the IRP must provide the Council with a report[19] and may counsel the health practitioner or recommend that the practitioner agree to have conditions placed on their registration or that the Council suspend the practitioner for a specified period.

After considering the IRP recommendations, the Council can suspend a practitioner or place conditions on their registration. However, noting the supportive framework, such conditions or suspension can only be imposed with the health practitioner's voluntary consent. If a practitioner does not agree, the Council must deal with the matter as a complaint[20].

Issues for consideration

Preliminary consultation indicated that most stakeholders were generally supportive of the health stream, with its focus on rehabilitating the practitioner in a supportive environment. However, some issues were raised in relation to the complexities of dealing with a practitioner who has both an impairment as well as a performance or conduct issue. Broader issues relating to dealing with practitioners who have issues that fall into more than one stream are dealt with later in this paper. However, the Ministry seeks submissions on whether the health stream is working well and whether any changes are required.

Issues for consideration

4) Should any changes be made to the health stream?

5.2 The performance stream

The performance stream is designed to manage practitioners, whose performance may be unsatisfactory, in a supportive way. It is intended to be a non-disciplinary process, focusing on protecting the health and safety of the public with the aim of bringing a practitioner's performance up to expected standards.

A health practitioner's performance is 'unsatisfactory' if it falls below the standard reasonably expected of a practitioner of an equivalent level of training and experience.[21] The performance stream requires a two-stage response – a performance assessment, and where that assessment finds that the practitioner's performance is unsatisfactory, a Performance Review Panel (**PRP**). Once a matter is within the performance stream, it ceases to be dealt with as a complaint.

[18] Section 152E of the NSW National Law
[19] Section 152I of the NSW National Law
[20] Section 152L(1) of the NSW National Law
[21] Section 153A of the NSW National Law

A Council can require a practitioner to undergo a performance assessment if a Council considers a practitioner's professional performance, or any aspect of their performance, is, or may be, unsatisfactory. Matters that raise significant issues of public health or safety or raise a prima facie case of professional misconduct cannot be dealt with by way of a performance assessment and must be dealt with as a complaint[22]. For the assessment, an assessor assesses the performance of the practitioner and provides a report to the Council. The Council considers the report and can then:

- decide that no further action be taken,
- require a PRP to conduct a performance review
- refer the matter to an IRP
- require the health practitioner to undertake counselling
- make a complaint against the practitioner, or
- impose conditions on the practitioner's registration with the practitioner's consent.[23]

If a matter is referred to a PRP, the PRP will undertake the review and may make recommendations to the Council about the health practitioner that the PRP considers appropriate. If the PRP considers that the matter raises significant issues of public health or safety or raises a prima facie case of professional misconduct or unsatisfactory professional conduct, the PRP must recommend to the Council that a complaint is made about the practitioner[24].

The PRP also has the power, if it finds that a practitioner's professional performance is unsatisfactory, to:

- impose conditions on the practitioner's registration,
- order that the practitioner undertake an educational course,
- order that the practitioner regularly report on their practice as specified by the PRP, or
- order that the practitioner seek and take advice in relation to their practice[25].

As noted above, more serious performance related issues can be dealt with as a complaint against a practitioner and can be prosecuted before NCAT. NCAT can suspend or cancel a practitioner's registration if they find that the practitioner is "not competent" to practice or is guilty of professional misconduct.

Issues for consideration

In preliminary consultation, stakeholders raised several issues with the performance stream.

Some argued that there may be a lack of flexibility as to when conditions can be imposed on a practitioner. A Council can impose conditions but only with the consent of the health practitioner after a performance assessment or a PRP can impose conditions independently after a performance review panel hearing. This means that at other times,

[22] Section 154A of the Health Practitioner Regulation National Law (NSW)
[23] Section 155C(1)(f) of the NSW National Law
[24] Section 156B(2) of the NSW National Law
[25] Section 156C(2) of the Health Practitioner Regulation National Law (NSW)

if there are concerns about a practitioner that can be best mitigated by conditions, the only avenue for the Council to take action is through the section 150 powers available to it and section 150 may not be the most effective or appropriate mechanism for dealing with the practitioner who has a performance issue.

Connected to the above is the issue of timeliness and efficiency of the performance pathway, noting that the performance pathway involves a two-stage approach. The current approach can be time consuming and complex. However, while recognising issues with efficiencies some stakeholders have noted the importance of the practitioner's participation in the processes and that assessments may need to be undertaken in person, which by necessity, will take time because of the logistics involved with the assessment.

A possible mechanism to respond to some of these concerns about inflexibility and timeliness is the concept of undertakings, which is dealt with later in this paper.

Another issue raised during preliminary consultation, was health practitioners who remain on the performance pathway for extended periods of time and do not improve, or who repeatedly return to the performance pathway (for different or similar issues).

It is expected that health practitioners have the requisite knowledge, skill and judgement to carry out their professional practice. A practitioner's skills may, from time to time, and due to a range of reasons, fall below expected standards. An important role of Part 8, the Councils and PRPs is to assist with remediating the practitioner to bring their skills up to required professional standards. This is important from both the practitioner's and the public's perspective to help ensure the safe and effective delivery of health services across NSW. However, this paper seeks submissions on whether the current approach works appropriately in the context of practitioners who continue to have performance issues for extended periods of time.

Where there are on-going performance issues, a complaint can be made to the HCCC on the grounds that the practitioner is "not competent" to practice, which could then be investigated by the HCCC and potentially prosecuted before NCAT. However, this will only extend an already time and resource intensive approach. While it is important to ensure, where safe to do so, that practitioners whose performance is unsatisfactory can be given an opportunity to improve, it is also important to be able to set clear expectations and be able to deal with defects in performance that do not improve in a timely manner.

One option for consideration is the idea of critical performance conditions, a breach of which may result in either automatic referral to the HCCC and/or automatic cancellation of a health practitioner's registration by NCAT.

Similar concepts already exist in the NSW National Law, which has both critical compliance conditions for conduct matters and critical impairment conditions for health matters.

For critical compliance conditions, these can only be made following a finding of unsatisfactory professional conduct or professional misconduct. Following such a finding:

- If a PSC or NCAT imposes conditions on a practitioner's registration, it also has the option of directing that a contravention of such a condition will result in the practitioner's registration being cancelled – and such conditions are referred to

as “critical compliance” orders or conditions,[26]

- If in section 150 proceedings, the Council is satisfied that that the practitioner has contravened a critical compliance condition, the Council must suspend the practitioner and refer the matter to NCAT as a complaint,[27]
- If the complaint is proven regarding the breach of a critical compliance order or condition, NCAT must cancel the practitioner’s registration[28].

For critical impairment conditions, these operate slightly differently because there is no need for a finding of unsatisfactory professional conduct or professional misconduct. Rather, if a Council at any time imposes a condition on a practitioner as a result of an impairment (for example, following an IRP and with the consent of the practitioner):

- The Council may order that contravention of a condition will result in automatic referral to the HCCC - with such conditions being referred to as critical impairment conditions,
- If the Council is satisfied that the practitioner has contravened a critical impairment condition, the Council must refer the matter to the HCCC, and the matter must be dealt with by way of a complaint against the practitioner[29].

A breach of a critical impairment condition does not result in automatic referral to NCAT and cancellation of registration because 1) the practitioner has not had a finding of professional misconduct or unsatisfactory professional conduct and 2) it recognises that “*many practitioners who are impaired may at the beginning of their participation in a Council’s health program have difficulty in settling into the compliance regime. In those circumstances a regime that results in automatic suspension and cancellation of registration for breach may be seen as unreasonably punitive and harsh*”[30]. However, it does allow for a recognition that breaches of certain impairment conditions are more serious than others and should be referred to the HCCC to consider whether or not a complaint should be prosecuted before NCAT to protect the public. This allows for more flexibility and gives additional options to the Councils in dealing with practitioners.

The Ministry would like to hear submissions on whether the performance stream should introduce a “critical performance condition” which could operate similar to critical impairment condition for health matters and/or a critical compliance condition for conduct matters.

If the NSW National Law were amended to allow for critical performance conditions, this would mean that if a PRP finds that the practitioner’s performance, or a particular aspect of the practitioner’s performance, is unsatisfactory and imposes conditions, the PRP could also impose a critical performance condition. A critical performance condition could, for example, result in either:

- A process similar to critical compliance conditions, whereby a breach of the critical performance condition could result in section 150 action being taken and, if the Council was satisfied the condition was breached, the Council must suspend the practitioner and refer the practitioner to NCAT, with NCAT being required to cancel the practitioner’s registration if satisfied that the practitioner

[26] Section 146B and s149A, NSW National Law
[27] Section 150(3), NSW National Law
[28] Section 149C(3), NSW National Law
[29] Section 150FA, NSW National Law
[30] HPCA Practice Note 8 2015, Critical Impairment Conditions

contravened the condition, or

- A process more similar to critical impairment conditions, whereby a breach of the critical performance condition must be referred by the Council to the HCCC and the matter treated as a complaint.

Having critical compliance performance conditions will better align the processes for non-compliance with conditions related to health or conduct. Further, it would recognise that some breaches of performance related conditions are more serious than others and allow swifter action to be taken against a practitioner who fails to comply with conditions imposed to protect the public and improve the practitioner's performance.

Issues for consideration

5) Should critical performance conditions be introduced in the performance pathway?
6) If critical performance conditions are introduced, should a breach of the conditions result in automatic referral to the HCCC (similar to critical impairment conditions) or, if the breach is proven, result in cancellation of the practitioner's registration by NCAT (similar to critical compliance conditions)?
7) Are there any other changes that should be made to the performance pathway to improve the approach for dealing with practitioners with persistent performance issues?

5.3 The conduct stream

The conduct stream deals with complaints relating to unsatisfactory professional conduct as well as higher level allegations of professional misconduct by a registered health practitioner.

Complaints relating to professional misconduct and serious unsatisfactory professional conduct are prosecuted by the HCCC before NCAT.

For less serious conduct matters, the Council has various ways to deal with a complaint including, but not limited to, counselling, referring the matter to another relevant entity or deciding to take no further action. Among the courses of action available to the Councils, the NSW National Law also has two different mechanisms to deal with lower-level complaints of unsatisfactory professional conduct which differ according to the profession:

- for medical, nursing and midwifery professions, a PSC may be held,
- for all other professions, the Councils may conduct a Council inquiry.

Professional Standards Committees

For the medical, nursing and midwifery professions, lower-level conduct complaints usually relating to unsatisfactory professional conduct can be prosecuted by the HCCC before a PSC. PSCs are intended to be less formal and legalistic than a NCAT hearing. However, over the years they have evolved to become highly formalised and run in a similar way to NCAT hearings.

PSC inquiries are open to the public unless otherwise directed by the PSC[31] and the relevant health practitioner and the HCCC may be, and usually are, legally represented.[32] Written reasons for proven complaints must be published.

The orders that can be imposed by a PSC include imposing conditions on a practitioner's registration, making an order requiring the practitioner to complete an education course, cautioning or reprimanding the practitioner. A PSC can make a 'critical compliance order or condition', a breach of which will result in the cancellation of the practitioner's registration[33]. A PSC can also impose a fine in certain cases and refer the practitioner to NCAT with a recommendation that a practitioner be suspended or have their registration cancelled[34].

There are some differences between a PSC and a NCAT hearing. A PSC cannot award costs, it cannot make a finding of professional misconduct and appeals are to NCAT rather than the Supreme Court.

Council Inquiries

Allegations of unsatisfactory professional conduct against a health practitioner who is registered in a health profession other than medical, nursing or midwifery may be dealt with in a Council inquiry.[35]

Council inquiries are generally less formal than PSC hearings with the ability of the Council to deal with an inquiry with as little formality and technicality as the law and proper consideration of the complaint permit. Unlike a PSC, Council inquiries are not open to the public.

In a Council inquiry, the Council may be assisted by a legal practitioner however, the health practitioner is not entitled to legal representation. Rather, the health practitioner is entitled to a support person and that person can also be a legal practitioner. The HCCC can make submissions to the Council in an inquiry however, they cannot be present at an inquiry except whilst making submissions (unless the Council decides otherwise). The HCCC is not entitled to be legally represented during the inquiry.

The Council has a range of powers available to it following a Council inquiry including:

- cautioning or reprimanding the practitioner,
- imposing conditions it considers appropriate on the practitioner's registration
- order that the practitioner complete an educational course, undergo medical or psychiatric treatment, or that the practitioner report on his or her practice in a way specified by the Council,
- require that the practitioner seek and take advice in relation to the management of their practice from persons specific by the Council, or
- impose a fine on a practitioner where the Council finds that the practitioner is guilty of unsatisfactory professional conduct and that there is no other order that is appropriate in the public interest.

[31] Section 171A, NSW National Law
[32] Section 171B, NSW National Law
[33] Section 146B and s149C of the NSW National Law
[34] Section 171D of the NSW National Law
[35] Section 145B(e), NSW National Law

As with PSCs, a Council can also refer the practitioner to NCAT with a recommendation that a practitioner be suspended or have their registration cancelled[36].

Issues for consideration

Preliminary consultation highlighted that it is not always clear when a matter raises a conduct issue and when a matter raises a performance issue and that there can be a cross over between the conduct stream and the performance stream. For example, a practitioner who fails to meet infection control guidelines or record keeping requirements could be dealt with in either the conduct or performance stream and it may not always clear on what basis these decisions are made. This raises issues about dealing with practitioners more holistically, which is dealt with separately in this paper.

The other issue that arose in preliminary consultation was more generally about whether the current approach for conduct matters is appropriate. Different views were expressed about how best to deal with conduct matters not reaching the threshold for investigation by HCCC and whether having different approaches, depending on the profession a practitioner is registered in, is appropriate.

In the Ministry's preliminary view, consistency across the professions in terms of dealing with lower-level conduct matters is preferable. However, there is no definitive view in preliminary consultation on the preferable approach for dealing with lower-level conduct complaints. While PSCs can deal with all lower-level conduct complaints not meeting the threshold for professional misconduct for the medical nursing and midwifery professions, the formality, expense and complexities involved for a PSC mean that in practice they are only utilised for complaints falling on the higher end of the scale. This means that there are limited practical way for the Medical or Nursing and Midwifery Councils to respond to low-level conduct complaints through the conduct stream. On the other hand, there was no consensus that Council inquiries (with respect to the other health professions) provided a better alternative.

An important component of PSCs is that that they are open to the public, which gives a layer of transparency to decision making. Council inquiries, on the other hand, are not open to the public, though written reasons for their decisions can be made available. However, the open nature of the PSCs may give rise to some of the formalities of PSCs as health practitioners are more likely to feel the need to be legally represented to defend their reputation. PSCs therefore are generally a more formal and lengthy process than Council inquires.

Potential for a conduct panel

A possible way forward may be to create a new consistent approach across all professions, drawing on the concept of panels which are used in the performance and health streams in NSW. Rather than having a PSC for medical, nursing and midwifery matters and Council inquiries for all other professions, in all cases a Council could establish a 'conduct panel' to assess the matter. This would provide a mechanism for dealing with lower-level conduct matters that are not serious enough to prosecute before NCAT by the HCCC.

[36] Section 148G of the NSW National Law

A conduct panel could be comprised of 3-4 members (both practitioners and community members) and could undertake a review and make findings and orders similar to what a PSC or Council inquiry can currently do under the NSW National Law. That is, a conduct panel could have a range of powers available to it following an inquiry into the matter, including:

- determine to take no action
- cautioning or reprimanding the practitioner,
- imposing conditions on the practitioner's registration
- order that the practitioner complete an educational course, undergo medical or psychiatric treatment, or that the practitioner report on his or her practice,
- require that the practitioner seek and take advice in relation to the management of their practice, or
- impose a fine on a practitioner where the panel finds that the practitioner is guilty of unsatisfactory professional conduct.

A conduct panel could also refer the practitioner to NCAT with a recommendation that a practitioner be suspended or have their registration cancelled.

Consideration would also need to be given as to what other powers a conduct panel would have and the process for making decisions. The Ministry's preliminary view is that a panel would need power to obtain information consistent with PRPs and IRPs. Then there is the question of legal representation and whether the panel should be open to the public and the publication of findings and reasons for their decision.

Generally, in Part 8, a health practitioner is not entitled to be legally represented (although they can be supported by a support person who can be a legal practitioner). Legal representation is allowed for PSCs because they are open to the public, unlike other processes under Part 8 (other than NCAT hearings). Opening a conduct panel to the public would assist with transparency of decision making. On the other hand, it is likely to require the ability of health practitioners to be legally represented, which would result in additional complexity and likely increased time to finalise matters.

To facilitate a more flexible and swifter model, the Ministry's preliminary view is that if the conduct stream moved to having a panel model, similar to IRPs and PRPs, practitioners should not be entitled to legal representation (though they could be assisted by a support person who could be a legal practitioner) and the hearings should not be open to the public. However, the Ministry recognises the importance of transparency of decision making. As such, consideration could be given to other transparency requirements, such as requiring publication of the written reasons for decision of a conduct panel.

Moving to a panel approach for conduct matters would both allow for consistency between the professions but also among the complaint streams. This may reduce complexity and increase understanding of the processes by practitioners and the public.

It is noted that if NSW National Law were amended to move to a conduct panel, the panel and/or the Council would need to have appropriate powers to inquire into the matter.

Issues for consideration

8) Should there remain two separate processes for dealing with conduct related complaints, PSCs and council inquiries, that differ depending on the profession?
9) Should NSW instead move to a panel model for dealing with low-level conduct complaints?
10) If NSW moves to a panel model for low-level conduct complaints for all professions
    a. Should practitioners be entitled to legal representation?
    b. Should the panel hearings be open the public?
    c. If the panel hearings should not be open to the public, what other transparency measures should be put in place?
11) If NSW moves to a panel model for low-level conduct complaints for all professions, what powers would the panel and/or the Council need to appropriate hear matters?
12) Are there any other changes that should be made to the conduct stream to improve the complaints management processes?

5.4 A combined model

The current approach in NSW of managing complaints in one of three distinct streams – health, performance or conduct - has both advantages and disadvantages. A streamed approach allows for focus to be given to the main issue impacting a practitioner's practice, with a view, where appropriate, to rehabilitating the practitioner to ensure that they can safely continue to practice. In preliminary consultation, most stakeholders were particularly supportive of the health program, with its emphasis on providing a supportive environment to assist a practitioner to return to good physical and mental health.

However, there can be difficulties when a practitioner has more than one issue. While a practitioner can be managed within more than one stream simultaneously, this can lead to delays, complexities and potential inconsistencies in approach and additional stress for a practitioner. For example, if a practitioner has both performance and impairment issues that need to be separately managed, two separate panels can be convened: the IRP and PRP. Different assessments will need to take place, and the practitioner will be managed by two separate panels, which may be unduly stressful for the practitioner. Further, the outcomes from each panel could be inconsistent whereby the IRP may recommend to the Council that certain conditions be made, and the PRP may impose certain conditions which may not work with those recommended by the IRP.

Another difficultly with performance and conduct matters, is that there is often a blurred line between what is considered to be a conduct matter and what is considered to be a performance matter. As discussed earlier in this paper, a health practitioner who, for example, fails to meet infection control guidelines or record keeping requirements could be seen as having a conduct issue, a performance issue, or both. The current system does not allow the practitioner to be looked at holistically to determine

appropriate action to be taken to protect the public, but rather requires the practitioner to be placed into one (or more) of the three streams for review.

Noting these difficulties, a suggestion was canvassed in the working groups as to whether a streamlined approach for dealing with complaints should be considered. This could be through combining the three streams and moving to a "fitness to practice" model with a focus on a holistic approach, which would assess whether a practitioner is overall fit to practice taking into account their health, performance and conduct as a whole. This process would look at ways, if possible, to remediate a practitioner who was not fit to practice.

Another option, noting in particular the close connection (and at times, overlap) between conduct and performance matters and the strong support for the impairment program, was moving to a single panel model for both performance and lower-level conduct while maintaining the health stream, as occurs in other States and Territories. A single panel for performance and conduct would potentially deal with complaints relating to:

- the unsatisfactory performance of a practitioner, or
- lower level unsatisfactory professional conduct.

Matters relating to professional misconduct would still be referred to NCAT and prosecuted by the HCCC.

Another option canvassed was retaining the three current streams but looking at ways to allow a practitioner, if required, to more easily be managed, and move, across the different streams.

While accepting that there are difficulties with the current approach, the Ministry's preliminary view is that the benefits of retaining three separate streams to manage complaints is likely to outweigh the disadvantages. While there can be a cross over between health, performance and conduct, in general these are distinct issues that often require management approaches tailored to the specific matter or complaint.

The strong support in preliminary consultation for maintaining the current structure of the health stream highlights the importance of dealing with a practitioner with a health issue in a supportive environment that recognises that all practitioners, like all persons, may require support with a health issue from time to time. Further, a panel or committee dealing with health matters is likely to require, by necessity, a different composition to any panel or committee dealing with a health practitioner's performance or conduct issues.

Where a panel is managing a health practitioner with a health issue, this will require the support of a medical practitioner. Whereas a practitioner with a performance issue will likely be best assessed and managed by, among others, a practitioner with a similar qualifications and skills. On the other hand, conduct issues will generally be able to be assessed and managed by, among others, a cross section of practitioners within the profession. As such, retaining three distinct streams, allows the composition of the panel or committee assessing the matter to be set adjusted according to the expertise needed to determine the issues.

That said, the Ministry would like to hear submissions on these issues and whether any changes should be made to improve the general management of complaints and notifications under Part 8.

Issues for consideration

13) Should the health, conduct, and performance streams be merged to move to a 'fitness to practice' model?
14) Should the health stream be maintained separately, and the conduct and performance streams combined to create a single panel?
15) If the three separate streams are maintained, are there improvements that can be made to the management of practitioners who have issues that cross over between the health, conduct and performance streams?

5.5 Assessment Committees

Another area of Part 8 to be considered as part of this review are Assessment Committees.

For complaints about health practitioners other than those in the medical, nursing and midwifery professions, a Council may refer the complaint to an Assessment Committee for investigation. For this to occur, the HCCC must have decided not to investigate the complaint or following an investigation, has decided that the matter should not be referred to the Tribunal. [37]

Assessment Committees do not fit strictly in either the conduct or performance streams and can be relevant to either stream. Assessment Committees investigate complaints and as part of those investigations, may obtain any medical, legal, financial or other advice required to assist it in its investigations[38] and to allow the Council to make a more informed decision. A Council may also direct an Assessment Committee, depending on the nature of the complaint, to undertake skills testing of the health practitioner.[39]

Following an investigation by an Assessment Committee, the Assessment Committee can submit a report to the relevant Council outlining any recommendations it considers appropriate including that the Council deal with the complaint at a Council inquiry or counselling or that the Council dismiss the complaint. After receiving the recommendations of the Assessment Committee, the Council can decide the most appropriate way to deal with the complaint in line with section 145B of the NSW National Law. This can include deciding to take no further action, referring the complaint to the HCCC for prosecution, or referring the matter for performance assessment or to an IRP.[40] However, if the Assessment Committee recommends that the Council deal with the complaint as a complaint of unsatisfactory professional conduct in a Council inquiry, the Council must comply with the recommendation.

Historically, Assessment Committees were introduced into the NSW National Law in 2010 following the entry of the health professions into the NRAS. Prior to 2010, the referral of complaints to Assessment Committees for investigation was a regular

[37] Section 147A of the NSW National Law
[38] Section 147B(2) of the NSW National Law
[39] Section 147C(1) of the NSW National Law
[40] Section 147D of the NSW National Law

practice for the Dental Board of NSW.

When NSW joined the NRAS in 2010, it was intended NSW retain its existing complaints processes in Part 8 which included Assessment Committees. Since then, complaints processes in NSW have evolved and all the Councils have access to the performance program which allows the Councils to have the performance of a health practitioner assessed including their knowledge, skills or judgment.

Assessment Committees have become much less utilised over time. In 2022/23, 1,268 complaints were referred for management by the Councils, and only 1 complaint was referred to an Assessment Committee. This figure contrasts significantly from the performance pathway, where 290 complaints were referred for performance assessment and 56 were referred to PRPs that same year.[41]

As such, this Review is seeking submissions on whether Assessment Committees should be retained or whether they should be removed from the complaints process altogether.

Issues for consideration

16) Should Assessment Committees be retained under the NSW National Law?

6. Undertakings

Many of the issues raised in preliminary consultation have noted that the Part 8 processes can be overly complex and may not be conducive for a practitioner proactively attempting to resolve concerns early. An option that was canvassed in preliminary consultation was allowing a Council to accept an undertaking given by a health practitioner to resolve a complaint.

Under the Queensland National Law, the National Boards have the discretion to accept an undertaking from a practitioner. An undertaking can resolve a complaint or notification and operates in a similar manner to a condition – it limits the practitioner's practice in some way to protect the public.

A health practitioner will undertake that they agree to do, or not to do, a certain action concerning their professional practice. However, unlike conditions, undertakings are proposed by the practitioner and accepted by the National Board, if the Board considers appropriate and safe to do so. In the National Board jurisdictions, if a practitioner wishes to have an undertaking removed or varied, they must apply to the National Board which may refuse or approve the practitioner's request. A practitioner is not able to make an application to revoke or vary an undertaking during the "review period" unless there has been a material change in the practitioner's circumstances[42]

Currently, Part 8 in NSW does not allow a Council to accept an undertaking.[43]. NSW does allow conditions to be imposed by consent, which is similar, but different to the concept of undertakings. Section 41P of the NSW National Law allows the Council to

[41] Health Professional Councils of NSW Annual Report 2022-23
[42] Section 125, Queensland National Law
[43] While the Councils cannot accept an undertaking, a NSW practitioner can give a National Board an undertaking at registration.

exercise any of its function with the written consent of the practitioner. This means that if the Council has a power to impose conditions, it can do so with consent. However, if the practitioner withdraws their consent, the Council must remove the conditions. Further, the Council can only exercise this power if the Council first has a function with a power to impose conditions. That is, it cannot be used pro-actively by a practitioner who recognises that they have an issue and undertakes to take action to improve the situation.

Both undertakings and conditions with consent will appear on the public register, unless it relates to the practitioner's health. A breach of a condition (including with consent) or an undertaking given to a National Board is considered to be unsatisfactory professional conduct[44].

Due to similar impacts of undertakings and conditions with consent but noting the increased flexibility around the accepting of an undertaking, the Ministry's preliminary view is that Councils should have the ability to accept an undertaking. Undertakings would allow a practitioner who proactively recognises that they have an issue that requires a regulatory response to identify the action that could be taken to mitigate risks to patients and the public. Where it is safe and appropriate to do so, a Council could accept the undertaking without the need for further regulatory action. It is of course recognised that not all matters will be suitable for an undertaking, with the more serious the matter the less likely that the matter can be resolved via an undertaking. However, allowing Councils an option to accept an undertaking would allow for minor complaints or issues to be dealt with expeditiously and with potentially less stress for the practitioner.

Like other Australian jurisdictions, if undertakings were implemented in NSW, review processes would likely be put in place whereby a practitioner may apply to the Council to have an undertaking amended or revoked.

The Ministry would like to hear submissions on whether a Council should be able to accept an undertaking from a practitioner to resolve a complaint or issue.

Issues for consideration

17) Should NSW allow the Councils to accept undertakings from health practitioners to resolve a complaint or issue?

[44] Section 139B(1)(c), NSW National Law

7. Other matters

Other minor matters have been identified or raised by stakeholders and the Ministry is seeking feedback on whether any changes to the NSW National Law are required. Further details are set out below:

Compliance powers and privilege	In undertaking its functions under the NSW National Law, a Council (or a panel) may require information held by third parties, such as medical records, to properly assess the complaint or matter. Currently, there are various provisions in the NSW National Law but generally they are tied to particular stages of a complaint or are limited to requiring information from the practitioner. For example: • Section 164G allows a Council to require a practitioner to provide information about the complaint or matter. • When a practitioner is in the performance stream, an assessor can be appointed to conduct a performance assessment. Once appointed, under clause 2A of Schedule 5B, the assessor can require a third party to produce relevant information or relevant records that would assist the assessor in conducting the performance assessment, • If Council is considering action under section 150 they have the power under section 150J to require a person to provide documents to assist the Council in making a decision about action to be taken. • Under section 144F, the Council or the HCCC may require the complainant to provide further particulars of a complaint but there is no compulsion on the complainant to comply with the request. The review presents an opportunity to consider whether the various compliance powers under the NSW National Law are appropriate. In particular, should the Council's power in section 164G be extended to allow the Council to require another person to provide information. Relevant information about a complaint, for example, medical records of patients, may be held by a third party such as the employer of the practitioner, a practice manager, or a health fund. Connected to the issue of the powers of the Council is the issue of privilege. Certain information held by the Council may be subject to a statutory privilege by virtue of section 99A(2) of the Health Care Complaints Act 1993. However, this privilege only applies if the information is exchanged with the HCCC. If the Council has broader powers to require the production of documents or inquire into matters at an early stage, it is timely to consider whether there should be a broader privilege that attaches to information obtained by a Council.

Compulsory referral of certain mental health patients to the Council	Section 151 of the NSW National Law requires the medical superintendent of a mental health facility to advise the Council if a health practitioner is found to be a mentally ill person or a mentally disordered person under section 27 of the Mental Health Act 2007. Section 151 is based on a similar provision in the now repealed Medical Practice Act 1992. However, it is noted that there are other mandatory reporting obligations to Ahpra by all registered health practitioners under the NSW National Law, including if another registered health practitioner is placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment. As health practitioners are already required to notify practitioners with an impairment that are placing the public at risk of substantial harm, the review presents an opportunity to consider whether there is still benefit in also requiring a medical superintendent (who will be a registered health practitioner) to also notify practitioners under section 151 to the Council or whether having one pathway will be more transparent and minimise confusion about where such a notification should be made.
Automatic referral to NCAT	Section 145D of the NSW National Law requires a Council or the HCCC to refer a complaint to NCAT if, at any time, either forms the opinion that the complaint may, if substantiated, provide grounds for suspension or cancellation of the practitioner's registration. This does not apply if the matter relates to an impairment and the matter is referred to an IRP. Matters that could lead to the suspension or cancellation of a practitioner's registration by NCAT would normally be matters relating to professional misconduct. It is important that such matters are considered by NCAT. However, the requirement to automatically refer the matter is potentially inconsistent with the Health Care Complaints Act 1993, which would require such complaints to normally be preliminarily assessed, investigated, and then, if the Director of Proceedings determines there is sufficient evidence to prosecute the matter, prosecuted before NCAT. It is important that serious complaints are properly assessed, investigated and prosecuted if appropriate. However, the review seeks feedback on whether the automatic referral to NCAT of such matters by the Councils, prior to such matters being

	investigated, is appropriate or whether instead there should be a requirement to refer such complaints to the HCCC for investigation.
Referral to a health assessment prior to consultation between the HCCC and the Councils	Section 145A of the NSW National Law provides that before any action is taken on a complaint, the Council and the HCCC must consult to see if agreement can be reached as to the course of action to be taken in relation to the complaint. For some complaints, there may be a benefit in a Council undertaking certain action before or while that consultation occurs, and agreement is reached between the HCCC and the Council. In particular, for heath related complaints, there may be a benefit in allowing the Council to exercise functions under section 145E to require a practitioner to undergo a medical assessment. The results of that examination may be relevant for the HCCC and the Council deciding what action to take in relation to a complaint. The review presents an opportunity to consider whether early action to require a practitioner to undergo a medical assessment before consultation with the HCCC, is appropriate
Review bodies	The NSW National Law has various review provisions, in particular at Division 8 of Part 8. Under sections 163 and 163A, if a "relevant order" is made in relation to a practitioner, there are rights of review before an "appropriate review body". The rights to seek a review sit with the practitioner. A relevant order is a cancellation, disqualification, suspension order or an order imposing conditions. Under section 163, an appropriate review body is: (a) if the order being reviewed provides that it may be reviewed by a Council, the Council; or (a1) if the NCAT List Manager decides, on application by the person the subject of the review or the HCCC, that a Council is the appropriate review body, the Council; or (b) if the NCAT List Manager decides, on application by the person the subject of the review, that a National Board is the appropriate review body, the National Board; or (c) otherwise, NCAT. Where conditions are imposed on a practitioner's registration, the Council will generally be responsible for the oversight of

	compliance with the conditions and therefore in practice reviewing the practitioner. However, if the Council considers that the conditions need variation or may be removed, the Council cannot vary or remove the conditions unless they are named as the appropriate review body. If the order imposing the conditions does not name a review body, then NCAT will become the default review body. Because of the terms of section 163A, the practitioner would need to make an application to NCAT to either change the review body to the Council or to vary or revoke the conditions. An application to NCAT can be time consuming and difficult to navigate for a practitioner. This review presents an opportunity to consider whether the processes for review of conditions in Division 8 of Part 8 are appropriate or whether it would be more appropriate to have the Council named as the appropriate review body for conditions imposed on a practitioner and allow the Council the power to remove or alter conditions (subject to procedural fairness being observed).
Education and Research Funds	Section 41S of the NSW National Law allows for the Councils to establish an Education and Research Account and to pay into such an account the amounts determined by the Minster for Health. Moneys in an Education and Research Account may be expended towards purposes relating to education and research about the health, performance and conduct of registered health practitioners or registered students and administrative expenditure incurred concerning such accounts. Education and Research Accounts were part of the pre-NRAS scheme for then NSW Boards for a number of the professions. However, the pre-NRAS NSW Boards were involved in accreditation. The Councils are no longer involved in accreditation matters. As such, this review presents an opportunity to consider whether it is still necessary or appropriate for the Councils to have Education and Research Accounts. If the Accounts should remain, it is also timely to consider whether the current process for expenditure set out in the NSW National Law are still appropriate.

8. Conclusion

Part 8 of the NSW National Law contains important provisions governing complaints processes for registered health practitioners in NSW. The paramount consideration of Part 8 is the protection of the health and safety of the public. It is in the public interest to ensure that these provisions remain up to date and fit for purpose so that the objectives of the NSW National Law are upheld.