Conditions Handbook

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# Foreword

Creating conditions to be imposed on the registration of health practitioners is not as easy as it looks. The aim is to create conditions that achieve the aim of protecting the health and safety of the public, whilst also allowing health professionals to practise their profession.

Conditions have a life beyond the moment of their imposition. On a daily basis, the staff of the health professional Councils monitor practitioners’ compliance with their conditions. In doing so, they develop a strong working knowledge of how conditions “operate”, and some of the practical pitfalls that can occur when trying to interpret conditions and communicate with practitioners about their conditions.

This Conditions Handbook attempts to harness the knowledge gained into a single resource, to assist you in the drafting of conditions (and orders) that are both workable and effective, and ultimately achieve their intended purpose.

The Handbook is divided into two sections – the “Explanatory Paper” and the “Bank”. The “Explanatory Paper” guides you through the practical considerations relevant when drafting conditions. The “Bank” provides a (non-exhaustive) set of template conditions, which have been formulated to suit most circumstances.

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 further assistance or if you would like to provide any suggestions or amendments to this document.

This edition was revised and approved by the Dental Council February 2019.

# Overview of the process of imposing conditions and orders

## 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”)](http://www.legislation.nsw.gov.au/maintop/view/inforce/act%2B86a%2B2009%2Bcd%2B0%2BN).

[Table 1](#TABLE1) 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](#TABLE1" \o "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)](http://www.hpca.nsw.gov.au/Legal-Services/Practice-Notes/default.aspx)
* A condition makes a practitioner’s or student’s registration conditional on compliance with the condition. An order requires them to do a specific activity or task.
* What do you want to achieve?

Are you seeking to restrict the practitioner’s registration i.e. the way in which they practise their profession?

* If so, a condition may be appropriate
* If not, some other order may be appropriate
* Conditions will generally be recorded in the public National Register, one exception being “health” conditions (see ss [225](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.3-sec.225%2B0%2BN?tocnav=y) and [226](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.3-sec.226%2B0%2BN?tocnav=y) of the Law and [2.2 Making private conditions](#drafting2)).

Any other order (see ss [156C(2)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?autoquery=(Content%3D((%22order%22%20AND%20%22course%22)))&display=Health%20Practitioner%20Regulation%20National%20Law%20(NSW)%20No%2086a&dq=Within%20Title%3D%22), [146B(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?autoquery=(Content%3D((%22order%22%20AND%20%22course%22)))&display=Health%20Practitioner%20Regulation%20National%20Law%20(NSW)%20No%2086a&dq=Within%20Title%3D%22), [148E](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?autoquery=(Content%3D((%22order%22%20AND%20%22course%22)))&display=Health%20Practitioner%20Regulation%20National%20Law%20(NSW)%20No%2086a&dq=Within%20Title%3D%22),and [149A(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?autoquery=(Content%3D((%22order%22%20AND%20%22course%22)))&display=Health%20Practitioner%20Regulation%20National%20Law%20(NSW)%20No%2086a&dq=Within%20Title%3D%22)), 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 and cancellations or disqualifications of registration) can be the subject of formal review under ss [150A](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150a%2B0%2BN?tocnav=y), [150C](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150c%2B0%2BN?tocnav=y), [152K](http://www.legislation.nsw.gov.au/maintop/view/inforce/act%2B86a%2B2009%2Bcd%2B0%2BN) or [163B](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163b%2B0%2BN?tocnav=y) of the Law depending on the circumstances (see [4.1 Reviewability of conditions/orders](#reviews1)).
* Orders cannot be the subject of formal review hearings (see [4.1 Reviewability of conditions/orders](#reviews1)).

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

* Only Professional Standards Committees (PSC) and Tribunals may impose critical compliance conditions (or orders). Refer to HPCA Legal Practice Note 7 – Critical Compliance Orders and Conditions (September 2015). [*https://www.hpca.nsw.gov.au/sites/default/files/legal\_practice\_note\_7\_critical\_compliance\_orders\_and\_conditions\_final.pdf*](https://www.hpca.nsw.gov.au/sites/default/files/legal_practice_note_7_critical_compliance_orders_and_conditions_final.pdf)
* 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)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) and [149A(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) of the Law).
* The effect of a proven contravention (breach) is swift and comprehensive (see ss [150(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) and [149C(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) of the Law and the cases of *Medical Council of NSW v Ghannoum* [2018] NSWCATOD 6 and *Dental Council of NSW v Stewart* [2018] NSWCATOD 135 where these 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. You need to understand the origin of any such condition as this will dictate whether 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 [150](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y), [150A](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150a%2B0%2BN?tocnav=y), or [150C](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150c%2B0%2BN?tocnav=y) | 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 s 150 conditions (using ss [150F](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150f%2B0%2BN?tocnav=y) and [150I](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150i%2B0%2BN?tocnav=y) of the Law) and the Council can put such recommendation into effect.**Note**: 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 [163](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163%2B0%2BN?tocnav=y) and [163A](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163a%2B0%2BN?tocnav=y)).  |
| A Performance Review Panel (PRP) | No (you could make recommendations for a subsequent review body to take into account). |
| A PSC or Tribunal dealing with a complaint | No (You could make recommendations for a subsequent review body to take into account).**Note**: If the existing conditions were imposed under s 150 and you are now dealing with a complaint resulting from the same matter, the s 150 conditions fall away by reason of you dealing with the complaint (see [s 150I](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150i%2B0%2BN?tocnav=y) and s. 150H of the Law).  |
| A Tribunal or a Council dealing with a review application under [s 163B](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163b%2B0%2BN?tocnav=y) | Yes, but only as set out in [s 163A(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163a%2B0%2BN?tocnav=y) of the Law regarding “relevant orders” as defined in that section (i.e. suspension, cancellation, disqualification, conditions on registration). |
| A Tribunal dealing with an appeal concerning disciplinary outcomes or dealing with an appeal concerning National Board registration decisions under [s 175](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.14a-sec.175%2B0%2BN?tocnav=y) | May only deal with any conditions under appeal.(You could make recommendations about other pre-existing conditions for a subsequent review body to take into account) |
| A Council Inquiry dealing with a complaintunder [s 148](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5%2B0%2BN?tocnav=y) | No, not under your Inquiry powers.But if the Council is the review body under [s 163B](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163b%2B0%2BN?tocnav=y) 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 [s 41P](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.5a-div.3-sec.41p%2B0%2BN?tocnav=y) of the Law regarding the exercise of Council functions with consent. |

* If you are of the view that a current condition should remain or be affirmed make a comment in your written decision. 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 creates 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.

## DRAFTING CONDITIONS

### 2.1 Finding template conditions

* + Refer to the [Template Conditions Bank](#limitingpractice).
	+ Please refer to the most current version of the Template Conditions as:
	+ They are generally capable of being monitored by the Council.
	+ Practitioners have successfully complied with most of the conditions over the years.
	+ They have been developed in consultation with relevant organisations e.g. Medicare, Pharmaceutical Services Unit, Toxicology Unit (for Urine Drug Testing) and Concord Hospital (for Urine Ethyl Glucuronide testing).
	+ Template conditions are continually reviewed and evolve in response to submissions from subject practitioners and the Councils’ monitoring and legal experiences.

### 2.2 Making private conditions

* Some conditions do not appear on the public national register.
* Make it clear in your decision 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 do consider it necessary that a third party be aware of a practitioner’s health conditions (almost certainly for monitoring purposes), please explain this in your decision. See also [3.3 Notifying others of conditions and/or a decision](#effect4).

* Be aware that while [s 225](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.3-sec.225%2B0%2BN?tocnav=y) of the Law stipulates what information must be recorded on the register, [s 226](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.3-sec.226%2B0%2BN?tocnav=y) 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, encourages 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 includes a copy of all policies, position statements, guidelines or protocols incorporated in the conditions. Copies are provided to subject practitioners and they are also available on the HPCA or Councils’ websites.
* Breach of a policy or protocol can amount to a contravention of conditions or orders if it has been incorporated into the condition, and in turn unsatisfactory professional conduct (see [sub-ss 139B(1)(c) and (d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.1-sec.139b%2B0%2BN?tocnav=y) 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 accept the need for the order/condition and is therefore more likely to comply.
* It is important for your order or condition to be reasonably connected in your written decision to both the evidence you have relied on and your reasons.
* The Council will look to your written decision for guidance in its 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 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.

## 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](http://www.ahpra.gov.au/Registration/Registers-of-Practitioners/Terms-in-the-Register.aspx)).
* Craft conditions that can stand alone, for example, include a specific date rather than referring to the “date of this decision”, as the decision will not be part of the public Register. Also, conditions may be gradually eased and incrementally removed from the public Register, so any remaining conditions will need to make sense.
* Refer to “the practitioner” in each condition (and not to refer by name, remembering that the conditions can only be accessed through practitioners’ individual register entries.) 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

* 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.”[[1]](#footnote-1)
* Your conditions and orders must be directed to the subject practitioner and not others. (It would be inappropriate to require the compliance of anyone other than the subject practitioner.) The [Template Conditions](#limitingpractice) are drafted with this in mind.

#### 3.2.1 Workability, effect dates and timeframes

* Include clear effect dates and allow workable and realistic timelines. If in doubt, contact Council staff for assistance.
* Practitioners, employers and other interested parties, including monitoring staff, need certainty. A clear effect date will prevent ambiguity about whether a condition or order has been breached.
* Allow time for necessary administrative arrangements. Conditions and orders have immediate effect, unless otherwise stated and it can be unfair to expect a practitioner to comply immediately. For example, supervision involves approaching supervisors and having them 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 is not to practise until a condition is met, state this clearly. Otherwise, bear in mind that the practitioner will be allowed a reasonable time to make administrative arrangements to comply with conditions.
* With educative orders, check courses exist and are offered in 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 exchange of information with third parties, which assist the Council to independently verify a practitioner’s compliance with conditions. Such mechanisms will also help inform any review of conditions (see [4. Reviews](#REVIEWS)).
* Mechanisms which assist the Council include:
	+ Requiring supervision;
	+ Requiring urine drug screens;
	+ Facilitating the provision of Medicare data; and
	+ Advising key stakeholders of the imposition of conditions (i.e. Pharmaceutical Regulatory Unit and the Public Health Unit of the Ministry of Health, current and future employers or treating practitioners etc) 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 play a role in the monitoring process.

* Think carefully about whether employers (or the like) should be included as part of any mechanism. For example, it is unusual to provide details of health conditions to employers (usually they are informed of the fact that health conditions have been imposed rather than the details of such conditions), but in some instances the safety imperatives 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 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 review by a Council appointed psychiatrist (who sends their report to the Council) it is logical to also require subsequent attendance at a review interview at the Council in the same timeframe;

A condition to not 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 Regulatory Unit to surrender the relevant drug authorities.

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

* Ensure that all your orders and conditions are drafted so they put any obligations onto the subject practitioner. The [Template Conditions](#limitingpractice) take this into account.
* Understand that whilst some conditions clearly require others to take on responsibilities (such as supervisors), affected people are always asked by the Council if they consent to the role before being formally approved.
* If your decision 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](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.14b-sec.176c%2B0%2BN?tocnav=y) of the Law.
* This does not preclude you from stating in your decision that a particular person appears to be suitable for a role envisaged by your orders or conditions, because the Council will consult with them before formal approval is given.

#### 3.2.4 Other factors to consider

* Craft stand-alone conditions*.* Imagine them subsequently being lifted incrementally. Any remaining conditions need to make sense for future monitoring and review and to future employers or supervisors.
* Ensure any critical compliance conditions are clearly identified as such (see [sub-ss 146B(3)-(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) for PSCs and [sub-ss 149A(4)-(5)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) for Tribunals).
* Ensure supervision, audit and like conditions include 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.
* Note that some conditions can only be monitored by self-reporting. Although less effective, such conditions can still have a role.
* Avoid drafting conditions that put the Council in the position of approving an aspect of the practitioner’s practice – rather aim to have the practitioner demonstrate they practise in accordance with published standards, policies, or guidelines. For examples, see the [Training and Education conditions.](#training)

### 3.3 Notifying other parties of conditions and/or a decision

* Most conditions are recorded in the publicly accessible 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](#drafting2)).
* A third party may need to be provided with a copy of your decision, or your conditions and orders, so they are suitably informed and in a position to assist the Council in its monitoring activities. Examples might be supervisors and treating practitioners. If a third party is to be provided with a copy of your decision, consider:

Ordering a third party be provided with your decision and/or your orders (see [Table 2](#TABLE2)).

Including a condition that the subject practitioner/student is to ensure the provision of the conditions and/or decision to the relevant individuals. This may require the practitioner/student to return a copy of the conditions and/or decision signed by the relevant individual to the Council (see [Monitoring conditions A and B](#monitoring)).

* Note also that certain decision making bodies have specific statutory responsibilities to release a decision to parties or a third party (see[Table 2](#TABLE2)). Understanding who receives a decision in any case may inform your decision as to whether protection of the public will be better served by an order that your decision, or your conditions and orders, be provided to others.
* Section 176BA of the National Law requires Councils to give employers the details of conditions imposed and a copy of the relevant written decision.
* Make sure you 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.

## 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, nominate the Council to be the “*appropriate review body*” if you want the relevant conditions to be reviewed by the Council, otherwise, the appropriate review body will default to the Tribunal (see [s 163(1)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163%2B0%2BN?tocnav=y) 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](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163b%2B0%2BN?tocnav=y) of the Law.

In contrast, applications for review of a Tribunal order to cancel or suspend a practitioner’s registration (or to disqualify from being registered) are generally referred to a differently constituted Tribunal for an Inquiry under [s 163A](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163%2B0%2BN?tocnav=y) of the Law.

**Note:** Orders are not reviewable but can be appealed. Once the ordered thing is done, the order should be able to be lifted (see [1.2 Differentiating between conditions and orders](#power3)).

* If you are the Council imposing conditions under s 150, or under ss 152J or 152M following an IRP, the Council will automatically be able to review its own orders 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](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.1-sec.3%2B0%2BN?tocnav=y) of the Law), all decision making bodies 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 [Monitoring conditions text box](#monitoringtextbox).

### 4.2 Self-executing conditions and orders

* Consider carefully whether you intend to impose a condition or order (a suspension order for example), 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 6 months.
	+ Equally, suspension for 6 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](#Power1)).

**Note:** Suspensions by Tribunals and recommendations of suspension by IRPs need to specify the period of suspension (see ss [149C](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) and [152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y)), whereas suspensions under s 150 do not need a period to be specified (because reviews can be made at any time under [s 150A](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150a%2B0%2BN?tocnav=y) 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 (subject to [s 163B(5)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.8-sec.163b%2B0%2BN?tocnav=y) of the Law) make a review application and ask that a condition be altered or removed.

## 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.

| **P R A C T I C E C O N D I T I O N S** |
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| **PROCEDURAL CONDITIONS** | **Supplementary Materials / notes** |
| **Notifying current employers** |  |
| 1.
 | To forward evidence to the Dental Council of NSW within 14 days of **[insert date]**, that *he/she* has provided a copy of **[*this decision / full conditions / practice conditions*]** to:**[List intended recipients** i.e. Principal of practice, supervisor and the responsible senior officer in any place that he/she works (including any locum agencies and hospitals).**]** | This condition can be worded so as to require the practitioner to provide different information to different parties. |
| **Notifying future employers** |  |
| 1.
 | Within 14 days of a change in the nature or place of *his/her* practice, *he/she* is to forward evidence to the Dental Council of NSW that *he/she* has provided a copy of **[*this decision / full conditions / practice conditions*]** to:**[List intended recipients** i.e. Principal of practice, his/her supervisor and any other responsible senior officer in any place that he/she works (including any locum agencies and hospitals).**]** | This condition can be worded so as to require the practitioner to provide different information to different parties. |
| **Information exchange** |  |
| 1.
 | To authorise and consent to any exchange of information between the Dental Council of NSW and Medicare Australia **[*and health funds*]** for the purpose of monitoring compliance with these conditions. |  |
| 1.
 | To only be employed as a dental practitioner in circumstances where the employer has agreed to notify the Dental Council of NSW of any breach of the conditions or unsafe practice and exchange information with the Council related to compliance with the conditions. |  |

**NOTE:** When sitting as a Tribunal, Inquiry 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 Law)

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

When sitting as the Tribunal, PSC, Inquiry or the Council, include the following to ensure practitioners who move interstate can have conditions reviewed by the Dental 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 Dental Board of Australia.*



**P R E S C R I B I N G A N D O T H E R D R U G C O N D I T I O N S**

* 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) ( the Law); 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 Regulatory Unit (PRU) is the body responsible for the administration of the PTG.
	+ It is the PTG that gives a registered dental 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 Law 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 PRU provides a safety net to ensure that each is aware of the practitioner’s conditions relating to prescribing restrictions, and assists in themonitoring of a practitioner’s compliance with conditions.

| **P R A C T I C E C O N D I T I O N S** |
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| **PRESCRIBING AND OTHER DRUG CONDITIONS** | **Supplementary Materials / notes** | **COMPLEMENTARY CONDITIONS** |
| **Surrendering authority and restrictions** |  |  |
| 1. A11
 | **Schedule 8**1. Not to possess, supply, administer or prescribe any “drug of addiction” including derivatives or compounded medication (Schedule 8 of the NSW Poisons List) as defined by *Poisons and Therapeutic Goods Act 1966* (NSW) or any equivalent List in any other Australian State or Territory.

***Optional:*** *Not required if written evidence already exists.*1. To provide written evidence to the Dental Council of NSW that *he/she* has attended the offices of the Pharmaceutical Regulatory Unit of the NSW Ministry of Health and consented to an Order being made under the *Poisons and Therapeutic Goods Regulation 2008* to prohibit *him/her* from possessing, supplying, administering or prescribing any **[*Schedule 8 drug*/list specific S8 drug]** by **[insert date].**
 | See [Poisons and Therapeutic Goods (Poisons List) Proclamation 2016](http://www0.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons_list_alpha_pdf.asp)[See s 8 of the *Poisons and Therapeutic Goods Act 1966*](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B31%2B1966%2Bpt.2-div.2-sec.8%2B0%2BN?tocnav=y)[See cl 175 of the *Poisons and Therapeutic Goods Regulation 2008*](http://www.legislation.nsw.gov.au/fragview/inforce/subordleg%2B392%2B2008%2Bpt.9-sec.175%2B0%2BN?tocnav=y)For definition of supply, [see s 4 of the *Poisons and Therapeutic Goods Act 1966*](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B31%2B1966%2Bpt.1-sec.4%2B0%2BN?tocnav=y) | See the Procedural conditionsIf the restriction is due to impairment, see the Heath conditions. |
| 1. A11
 | **Schedule 4 Appendix D** Not to possess, supply, check or administer any “Prescribed Restricted Substances” (Schedule 4 drug listed in Appendix D) as defined in the Poisons and Therapeutic Goods Regulation 2008 (NSW).***Optional:*** *Not required if written evidence already exists.*1. To provide written evidence to the Dental Council of NSW that *he/she* has attended the offices of the Pharmaceutical Regulatory Unit and consented to an Order being made under the *Poisons and Therapeutic Goods Act 1966* to prohibit *him/her* from possessing, supplying, administering or prescribing any **[*Schedule 4 Appendix D drug*/list specific S4D drug]** by **[insert date].**
 | See [cl 61](http://www.legislation.nsw.gov.au/fragview/inforce/subordleg%2B392%2B2008%2Bpt.3-div.7-sec.61%2B0%2BN?tocnav=y) and [Appendix D](http://www.legislation.nsw.gov.au/fragview/inforce/subordleg%2B392%2B2008%2Bapp.d%2B0%2BN?tocnav=y) of the *Poisons and Therapeutic Goods Regulation 2008*See [Poisons and Therapeutic Goods (Poisons List) Proclamation 2016](http://www0.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons_list_alpha_pdf.asp)[See s 18AA of the *Poisons and Therapeutic Goods Act 1966*](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B31%2B1966%2Bpt.3-div.1-sec.18aa%2B0%2BN?tocnav=y)For definition of supply, [see s 4 of the *Poisons and Therapeutic Goods Act 1966*](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B31%2B1966%2Bpt.1-sec.4%2B0%2BN?tocnav=y) | See the Health conditionsSee the Procedural conditions |
| 1. A1
 | Not to possess, supply, administer or prescribe **[list specific drug e.g. *Benzodiazepines*]**.Schedules 2 and 3 Not to possess, supply, check or administer any drug listed in Schedule 2 or Schedule 3 of the Poisons List in force under section 8 of the Poisons and Therapeutic Goods Act 1966 (NSW). |  | See the Health conditionsSee the Procedural conditionsSchedules 2 and 3 • Notification and monitoring conditions compliment these condition • Consider periodic reporting condition compliments these condition • Consider supervision conditions |
| 1. **Qualified restrictions**
 |  |  |
| 1. A11
 | 1. This condition is not relevant and has been removed.
 |  |  |
| **Education courses** |  |  |
| 1. A11
 | To complete within **[e.g. *6 or 12 months*]** of **[insert date of decision]** the **[insert name of course/seminar]** organised by **[insert name of education/training provider], or an equivalent course approved by the Dental Council of NSW**.1. Within **[insert timeframe]** of **[insert date of decision]** he/she must provide evidence to the Dental Council of NSW of his/her enrolment in the abovementioned course.
2. Within **[insert timeframe]** of completing the abovementioned course, he/she is to provide documentary evidence that he/she has satisfactorily completed the course.
3. To bear responsibility for any costs incurred in meeting this condition.
 |  | See the Training and Education conditions |

| **P R A C T I C E C O N D I T I O N S** |
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| **LIMITING PRACTICE** | **Supplementary Materials / notes** | **complementary conditions** |
| **Limiting the place/nature of practice** |  | See also Supervision and Mentoring conditions |
| 1.
 | To obtain Dental Council of NSWapproval before changing the nature or place of *his/her* practice. |  |  |
| 1.
 | Toadvise the Dental Council of NSWin writing at least seven days before changing the nature or place of *his/her* practice. |  |  |
| 1.
 | To practise only in a group practice approved by the Dental Council of NSW where there are at least **[# of *registered dental/health*]** practitioners (excluding the subject practitioner):**[Select all that apply]**Where the patients and patient records are shared between the Dental practitioners*.*Where there is always one other registered **[*dental/health*]** practitioner on site.Which is an accredited practice. |  |  |
| 1.
 | To practise only in a Dental Council of NSW approved **[describe employment setting / position]**.**For example:** private practice / hospital position / accredited teaching hospital or within its secondment network/ locum positions of greater than four weeks. |  |  |
| **Limiting the scope of practice** |  | See also Procedural conditions |
| 1.
 | Not to undertake solo dental practice. |  |  |
| 1.
 | Not to undertake locum positions. |  |  |
| 1.
 | Not to practise in a **[*private practice/aged care facility*]**. |  |  |
| **Limiting hours*** Conditions limiting hours can be used to assist health impaired practitioners.
 |  |  |
| 1.
 | To practise no more than **[…]** hours per week. |  |  |
| 1.
 | To practise no more than **[….]** hours per week with no more than **[….]** hours in any 24 hour period. |  |  |
| 1.
 | Not to**[describe type of time-restricted practice].****For example:** participate in any on-call roster / provide after-hour services / perform night-duty / undertake over-time shifts.  |  |  |
| 1.
 | To practise a maximum of **[…]** overtime *shift/s* per week in addition to standard rostered hours. |  |  |
| **Limiting the number of patients*** Conditions limiting patient numbers can be used to improve the quality of clinical care and conduct of the practitioner.
 |  |  |
| 1.
 | To treat no more than **[…]** patients in any one **[*hour / day / week*]**. |  |  |
| **Limiting procedures*** Conditions limiting procedures can be used to improve the quality of clinical care.
 |  |  |
| 1.
 | Not to undertake **[describe specific procedure/surgery]**. Any patient requiring these **[examinations/procedures/treatments]** must be referred to another dental practitioner.**For example:** crown and bridgework / implant treatment / periodontic treatment / fixed prosthodontics / endodontic treatment/ orthodontics. |   |  |
| 1.
 | To limit *his/he*r procedures to: **[List procedures (a) – (...)]**Any patient requiring procedures not listed above must be referred to another dental practitioner. |  |  |
| **Periodic reporting** |  | See also Procedural conditions |
| 1.
 | Within **[…]** days of the end of each calendar month, *he/she* is to provide the Dental Council of NSW with a record of all **[type of procedure]** undertaken in the last month **[*until such time as the Council decides these reports are no longer necessary*]**. The record must include the following:**[List appropriate record requirements.****For example:]**1. the date and time of each procedure;
2. the patient's name;
3. the nature of the procedure;
4. the place of the procedure; and
5. any complications arising as a result of the procedure (and specifically advising of any unplanned further treatment and/or any infection).
 |  |  |
| 1.
 | This condition is not relevant and has been removed. |  |  |

**T R A I N I N G A N D E D U C A T I O N C O N D I T I O N S**

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.

 Appropriate education providers include universities and professional associations.

| **P R A C T I C E C O N D I T I O N S** |
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| **TRAINING & EDUCATION CONDITIONS** | **Supplementary Materials /** **NOTES** | **COMPLEMENTARY CONDITIONS** |
| 1. □
 | This condition is not relevant and has been removed. |  |  |
| □ | To complete within **[e.g. 6 or 12 months]** of **[insert date of decision]** the **[insert name of course/seminar]** organised by **[insert name of education/training provider]**, or an equivalent course approved by the Council. 1. Within **[insert timeframe]** of **[insert date of decision]** *he/she* must provide evidence to the Dental Council of NSW of *his/her* enrolment in the abovementioned course.
2. Within **[insert timeframe]** of completing the abovementioned course, *he/she* is to provide documentary evidence to the Council that *he/she* has satisfactorily completed the course.
3. To bear responsibility for any costs incurred in meeting this condition.

In the event that the **[list specific course]** is unavailable, *he/she* must propose to the Council for approval a similar course to be undertaken in accordance with this condition no later than **[date – suggestion 2 months from date of conditions].** | See 3.2.1 Workability, effect dates and timeframes |  |

|  |  |  |  |
| --- | --- | --- | --- |
| C□ | To complete within **[e.g. 6 or 12 months]** of **[insert date of decision]** education meeting the following learning objectives, and approved by the Council before enrolment: **[crown and bridgework/endodontics/periodontics/implants/fixed or removable prosthodontics]** 1. Within **[insert timeframe]** of **[insert date of decision]** *he/she* must provide evidence to the Dental Council of NSW of *his/her* enrolment in the abovementioned course.
2. Within **[insert timeframe]** of completing the abovementioned course, *he/she* is to provide documentary evidence to the Council that *he/she* has satisfactorily completed the course.
3. To bear responsibility for any costs incurred in meeting this condition.
 |  |  |
| D□ | This condition is not relevant and has been removed. |  |  |
| E□ | To provide the Dental Council of NSW within [#] months from [insert date of decision] with the following:1. A summary prepared by him/her of the relevant guidelines on the keeping of good records. This summary must describe the information to be included in a patient record.
2. An overview of the steps he/she has taken to ensure that he/she is creating and keeping good records.
3. A copy of the records of [#] patients who have attended for consultation with him/her since the date of this decision.
 |  | Consider if audit and inspection conditions are needed |

| **P R A C T I C E C O N D I T I O N S** |
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| **AUDIT AND INSPECTION CONDITIONS** | **Supplementary Materials / NOTES** |
| **Records** |  |
| A | To submit to an audit of *his/her* dental practice, by a random selection of *his/her* records by a person or persons approved by the Dental Council of NSW and:1. The audit is to be held within **[#]** months from **[insert date of decision / recommencement of dental practise]** and subsequently as required by the Council.
2. The auditor(s) is to assess *his/her* compliance with the Dental Board of Australia’s Guidelines on Dental Records and Health Records (paragraph 8.4 in the Dental Board of Australia’s Code of Conduct) **[*and compliance with conditions* (if required)].**

 ***Optional:***  The auditor(s) should pay particular attention to:**[List areas of concern e.g. *treatment planning, medical history, prescribing, administering and recording of drugs of addiction and drugs of dependence*]**1. To ensure the auditor(s) provides a report of their findings to the Council in the form required by the Council.
2. The practitioner is responsible for all costs associated with this condition.
 | See the Dental Board of Australia’s Guidelines on Dental RecordsSee the Dental Board of Australia’s Code of Conduct |
| B□ | For the purposes of a Dental Council review of the practitioner’s understanding and application of the Dental Board of Australia’s Guidelines on Dental Records and Health Records (paragraph 8.4 in the Dental Board of Australia’s Code of Conduct) the practitioner is to provide to the Council within **[#]** months of the date of receipt of this decision:1. An overview of the steps the practitioner has taken to ensure that *his/her* patient records accord with the above guidelines and Code.
2. A copy of the records, including treatment plans and medical history for six (6) patients who have attended for a consultation and treatment with *him/her*, which demonstrate compliance with the above guidelines and code.
 | See the Dental Board of Australia’s Guidelines on Dental RecordsSee the Dental Board of Australia’s Code of Conduct |
| **Audit**  |  |
| C | To submit to an audit of *his/her* dental practice by a person or persons approved by the Dental Council of NSW.1. The audit is to be held within **[#]** months of **[having completed the prescribing course or other requirement]** and subsequently as required by the Council. The auditor(s) should:
2. Inspect records;
3. Review *his/her* drug register; and
4. Inspect *his/her* drug storage facilities.
5. The auditor(s) is to assess *his/her* practise with particular attention to:

**[List areas of concern e.g. *treatment planning, medical history, prescribing, administering and recording of drugs of addiction and drugs of dependence, compliance with Poisons and Therapeutic Goods Act and Regulation*]**1. To ensure the auditor(s) provides a report of their findings to the Council in the form required by the Council.
2. The practitioner is responsible for all costs associated with this condition.
 |  |
| **Infection Control Audit** |  |
| D | To submit to an audit of *his/her* dental practice(s), by a person or persons approved by the Dental Council of NSW and:(a) The audit is to be held within **[#]** months from **[insert date of decision / recommencement of practise]** and subsequently as required by the Council. (b) The auditor(s) is to examine and assess infection control standards(c) To ensure the auditor(s) provides a report to the Council of their findings in the form required by the Council.(d) The practitioner is responsible for all costs associated with this condition. | See the Dental Board of Australia’s Guidelines on Infection Control |

| **HEALTH C O N D I T I O N S** |
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| **HEALTH CONDITIONS*** Health conditions can be imposed on students and practitioners
* Consider whether it is appropriate to keep conditions relating to personal health private or if there is a stronger public interest in making the conditions public. See 2.2 Making Private Conditions
 | **Supplementary Materials / notes** | **complementary conditions** |
| 1.
 | Not to prescribe for self-medication. |  | See Prescribing conditions A-DSee Health conditions E, F and G |
| 1.
 | To attend for treatment by a **[*general practitioner*/ psychiatrist/ etc.]** of *his/her* choice. The frequency of treatment is to be determined by the treating practitioner. The practitioner:is to authorise the treating practitioner to inform the Dental Council of NSW of any of the following:1. failure to attend for treatment;
2. termination of treatment; or
3. a significant change in health status (including a significant temporary change).

must provide the Council with the professional details of the treating practitioner/s.**Optional condition** (if there are concerns that the practitioner is not complying with the above)must provide evidence to the Council of *his/her* attendance with the treating practitioner by **[insert timeframe].** |  | See Health condition M |
| 1.
 | Not to self-administer any:prescribed restricted substance (Schedule 4 Appendix D drug) or drug of addiction (Schedule 8 drug); narcotic derivative, non-prescription compound analgesic, ***Optional paragraphs*** *(if drug of abuse is not covered by the list above)*agents commonly used to manage sleep disorders such as zolpidem, zopiclone, promethazine**[insert or any other drug of concern]** unless such medications are prescribed by *his/her* treating practitioner and taken, as directed by *his/her* treating practitioner. Within seven days of being prescribed such substance or drug by *his/her* treating practitioner, the practitioner must:1. notify the Dental Council of New South Wales, and
2. provide written confirmation to the Council of such treatment including, the relevant copy prescription or direction from the treating practitioner.
 |  | See Prescribing conditions A-DSee Audit conditions BConsider imposing condition D if there is concern that the practitioner/ student is misusing a particular substance. |
| 1.
 | **Urine and hair drug screening**To comply with the Dental Council of New South Wales Drug Screening Policy and Participant Procedure – drug screening (as varied from time to time) and attend for:1. Urine drug screening (UDS) **[3 times a week/random]**, and
2. **[Quarterly]** hair drug screening.

To authorise the testing facility to forward all the results of UDS to:1. the treating practitioners, and
2. the Council.
 | See the Council’s Drug Screening Policy and Procedure* Notification and monitoring conditions complement these conditions
* Consider limiting practice conditions
* Consider restrictions on drug conditions
 | This condition supports the monitoring of condition E and should be considered when imposing conditions. It is required when decision-makers are concerned about substance misuse. |
| 1.
 | To abstain completely from the consumption of alcohol. |  | See Health condition G |
| 1.
 | This condition has been superseded |  |  |
| 1.
 |  **Alcohol screening** To comply with the Dental Council of NSW Alcohol screening policy and Participant procedure: breath testing for alcohol (as varied from time to time) and undergo **[regular/random]** breath testing.To comply with the Dental Council of NSW Alcohol screening policy and Participant procedure: EtG screening (as varied from time to time) and attend for:a. **[random] [2 times per week]** EtG screening (urine), and/orb. **[quarterly/random]** EtG screening (hair).To comply with the Dental Council of NSW Alcohol Screening Policy and Participant Procedure: CDT screening (as varied from time to time) and attend for CDT screening on the first Monday of each month.  | See the Council’s Alcohol Screening Policy and Participant Procedures (Breath testing, ETG, and CDT)* Notification and monitoring conditions complement these conditions
* Consider limiting practice conditions
* Consider restrictions on drug conditions
 |  |
| 1.
 | To attend for review by a Council-appointed **[*insert:* e.g. *psychiatrist / psychologist / neurologist*]** on a **[insert timeframe: 3 / 6 / 12]** monthly basis or as otherwise directed by the Dental Council of NSW before attending a review by an Impaired Registrants Panel as directed by the Council. The professional costs of the reviews undertaken pursuant to this condition will be met by the Council. |  | A recent council-appointed practitioner report needs to be available to the IRP review |
| 1.
 |  This condition has no application. |  |  |
| 1.
 | To attend for **[neuropsychometric / other testing]** testing by a Council-appointed practitioner, as directed by the Dental Council of NSW. The professional costs of this assessment will be met by the Council. |  | See Health condition M |
| 1.
 | To authorise the Dental Council of NSW to forward copies of the **[insert name of decision which imposed condition e.g. Impaired Registrants Panel report, s150 decision]** and any subsequent reports and any other information relevant to *his/her* health and treatment to the Council-appointed practitioners, supervisors, mentors and to *his/her* treating practitioners. |  | See Health condition M |
| 1.
 | To nominate a senior dental practitioner at **[the** **principal location /all locations]** where the practitioner practises for approval by the Dental Council of NSW. The practitioner is to:ensure that *he/she* provides the nominated practitioner with a copy of this condition. authorise the approved practitioner to notify the Council immediately if there are any concerns in relation to *his/her* health or if the practitioner’s health is adversely affecting their capacity to practise.***Optional condition***provide the approved practitioner with a copy of his/her health conditions |  |  |
| 1.
 | To adhere to any Ministry of Health requirements regarding infected health care workers. |  | Consider Health condition B, J and K |

| **P R A C T I C E C O N D I T I O N S** |
| --- |
| **SUPERVISION** | **Supplementary Materials /** **NOTES** | **Complementary conditions** |
| **Standard** These conditions are to be read with the Supervision Policy  |  |  |
| 1.
 | To practise under category **[A/B/C]** supervision in accordance with the Dental 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 Information Sheet and see Limiting Practice conditions)Refer to 4.2 Self-executing conditions and orders. | If Category A supervision, see condition D |
| 1.
 | At each meeting the practitioner is to review and discuss *his/her*  practice with *his/her* approved supervisor with particular focus on:**[List relevant areas of concerns (a) – (...)]****For example:** communication issues; substance abuse; workload; clinical performance; clinical record reviews; patient follow-up; clinical outcomes etc.***Optional:***To review **[#]** patient records.To observe the approved supervisor’s **[consultations/practise]** |  | If the practitioner is required to observe his/her approved supervisor’s consultations or practise see condition E |
| **Additional requirements*** Consider whether any further restrictions are required (see Information Sheet and see Limiting Practice conditions)
* These conditions specify additional requirements to the Compliance Policy – Supervision.
 |  |  |
| 1.
 | To authorise the Dental Council of NSW to provide proposed and approved supervisors with:**[Select all that apply:]**  a **[*copy/extract/summary*]** of **[any relevant decision /report]** a copy of the private conditions on the practitioner’s registration  **[list any other required documents]** | Consider whether non-publicly available information should be provided to the practitioner’s proposed and approved supervisors. |  |
| 1.
 | Not to practise until a supervisor has been approved by the Dental Council of NSW. | This condition is only recommended where concern is high enough to require the practitioner to have their supervisor approved before commencing or continuing to practise. (Continued)It is the Council’s view that this condition should generally be imposed for Category A supervision. |  |
| **Practitioners with limited registration**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.  |  |  |
| 1.
 | To ensure that the Dental Council of NSW is provided with a copy of reports prepared for the Dental Board of Australia from the supervisor approved by the Dental Board of Australia every **[e.g. *three months*]**. |  |  |
| 1.
 | To authorise the **[practice principal]** (or equivalent)to notify theDental Council of NSW immediately if there are any concerns in relation to *his/her* **[*compliance with any conditions/health or clinical performance*]***.* |  |  |

| **P R A C T I C E C O N D I T I O N S** |
| --- |
| **MENTORING** | **Supplementary Materials / NOTES** | **Complementary conditions** |
| **Standard** * These conditions are to be read with the Compliance Policy – Mentoring
 | Council’s Compliance Policy - Mentoring |  |
| 1.
 | To nominate a registered experienced **[type of specialist]** to act as *his/her* professional mentor for approval by the Dental Council of NSW in accordance with the Council’s Compliance Policy – Mentor (as varied from time to time) and the Mentor Position Statement and as subsequently determined by the appropriate review body. | See also the Council’s Mentor Position Statement  |  |
| 1.
 | Submit a mentoring plan which details specific objectives/outcomes of the mentoring relationship, including, but not limited to:**[List relevant areas of concerns (a) – (...)]****For example:** Dual relationships with patients; maintaining professional boundaries; specific education, professional development and learning activities planned to achieve the specified objectives/outcomes; frequency of meetings with the mentor. |  |  |
| 1.
 | At each **[frequency]** meeting with the mentor, the discussion is to include, but not be limited to, the following: **[List relevant areas of concerns (a) – (...)]****For example:** The personal and professional issues that brought the practitioner to the attention of the Council; work related problems; treatment planning and professional development; continuing education and professional activities. |  |  |
| 1.
 | Within **[#]** days of approval of the mentor by the Dental Council of NSW provide the Council with documentary evidence that the approved mentors have received:**[Select all that apply:]**  a **[*copy/extract/summary*]** of **[any relevant decision /report]** a copy of the private conditions on the practitioner’s registration  **[list any other required documents]** | Consider whether non-publicly available information should be provided to the practitioner’s proposed and approved mentors. |  |
| 1.
 | To be mentored for a minimum period of **[time period],** from the date the mentor is approved by the Council, and as subsequently determined by the Council. |  |  |

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.

|  |
| --- |
| 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 |

|  | **S150** | **IRP** | **Council on recommendation from IRP** | **Council inquiry**(N/A for medicine, nursing & midwifery) | **PRP**Practitioners only (not students) | **PSC**(for medicine, nursing & midwifery only)Practitioners only (not students) | **Tribunal** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Suspension** | Yes [s 150(1)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y)(practitioners and students)*Must* suspend if critical compliance order or condition contravened: [s 150(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) | N/A Can only recommend practitioner or student agree to suspension for a specified period:[s 152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y)For students only, can recommend suspension for max. of two years in the public interest: [s 152M](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152m%2B0%2BN?tocnav=y) | Yes ss [152J](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152j%2B0%2BN?tocnav=y) and [152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y) practitioners and studentsFor students only, can make written order of suspension for max. of two years in the public interest: [s 152M](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152m%2B0%2BN?tocnav=y) | N/ACan only recommend suspension of practitioner or student for a specified period in certain circumstances: [s 148G](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148g%2B0%2BN?tocnav=y) | N/A | N/ACan only recommend suspension for a specified period in certain circumstances: [s 146D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146d%2B0%2BN?tocnav=y)  | Yes, for a specified period:[s 149C(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) practitioners[s 149C(2)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) students |
| **Conditions** | Yes[s 150(1)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) practitioners[s 150(1)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) students | N/A Can only recommend practitioner or student agree to conditions: [s 152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y)For students only, can recommend specified condition/s be imposed for max. of two years in the public interest: [s 152M](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152m%2B0%2BN?tocnav=y) | Yesss [152J](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152j%2B0%2BN?tocnav=y) and [152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y) (practitioners and students)For students only, can make written order imposing conditions for max. of two years in the public interest: [s 152M](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152m%2B0%2BN?tocnav=y) | Yes [s 148E(1)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners[s 148E(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) students | Yes[s 156C(2)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y) | Yes[s 146B(1)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes[s 149A(1)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) practitioners[s 149A(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) students |
| **Critical Compliance Conditions** | N/A | N/A | N/A | N/A | N/A | Yes [s 146B(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes[s 149A(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y)  |
| **Prohibition Orders** | N/A | N/A | N/A | N/A | N/A | N/A | Yes[s 149C(5)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y)  |
| **Order counselling/ medical or psychological treatment** | N/A[[2]](#footnote-2)\* | N/ACan recommend practitioner or student undertake specified counselling:[s 152I(2)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y)**OR**can recommend practitioner or student agree to counsellingand/or treatment conditionCan counsel practitioner or student:[s 152I(2)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y) | Can impose recommended counselling and/or treatment condition only if satisfied that practitioner or student has voluntarily agreed:ss [152J](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152j%2B0%2BN?tocnav=y) and [152I(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y)  | Yes[148E(1)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners[148E(2)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y)students | N/A[[3]](#footnote-3)\* | Yes [s 146B(1)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes [s 149A(1)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y)practitioners [s 149A(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) students |
| **Recommend Council take appropriate action** | N/A[[4]](#footnote-4)\* | Yes[s 152I(2)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.4-sec.152i%2B0%2BN?tocnav=y) | N/A | N/A[[5]](#footnote-5)\* | Yes, can make appropriate recommendations to Council about the practitioner[s 156C(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y)Must recommend that Council make a complaint against practitioner in certain circumstances[s 156C(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y) | N/A[[6]](#footnote-6)\* | N/A[[7]](#footnote-7)\* |
| **Order skills testing** | N/A[[8]](#footnote-8)\*Note: a condition requiring performance assessment has no effect until Commission agrees ss [150(5)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) and [150E](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150e%2B0%2BN?tocnav=y) | N/A | N/A | N/A | May order skills testing in the form of a conditionMay direct performance be re-assessed at a future date[s 156D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156d%2B0%2BN?tocnav=y) | N/A | N/A |
| **Recommend complaint be dealt with by s 148 Council Inquiry** | N/A | Yes, but only for a practitioner or student registered in a health profession other than medical or nursing and midwifery: ss [152l(2)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150i%2B0%2BN?tocnav=y) and [145B(1)(e)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.2-sec.145b%2B0%2BN?tocnav=y) | N/A | N/A | N/A | N/A | N/A |
| **Reprimand/**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.**Caution** | N/A | N/A | N/A | Yes[s 148E(1)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners[s 148E(2)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) students | N/A | Yes [s 146B(1)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes [s 149A(1)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) practitioners[s 149A(2)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) students |
| **Order refund of fees** | N/A | N/A | N/A | Yes[s 148E(1)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners only | N/A | N/A | N/A |
| **Order educational course be completed** | N/A[[9]](#footnote-9)\* | N/A | N/A | Yes[s 148E(1)(e)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners[s 148E(2)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) students | Yes [s 156C(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y) | Yes [s 146B(1)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes [s 149A(1)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) practitioners[s 149A(2)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) students |
| **Order practitioner to report on practice to Council** | N/A[[10]](#footnote-10)\* | N/A | N/A | Yes[s 148E(1)(f)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners only | Yes[s 156C(2)(c)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y) | Yes [s 146B(1)(e)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes [s 149A(1)(e](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y)) practitioners only |
| **Order practitioner to take advice re management of practice**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. | N/A[[11]](#footnote-11)\* | N/A | N/A | Yes[s 148E(1)(g)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148e%2B0%2BN?tocnav=y) practitioners only | Yes [s 156C(2)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156c%2B0%2BN?tocnav=y) | Yes [s 146B(1)(f)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146b%2B0%2BN?tocnav=y) | Yes [s 149A(1)(f)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149a%2B0%2BN?tocnav=y) practitioners only |
| **Fines** | N/A | N/A | N/A | Yes[s 148F](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148f%2B0%2BN?tocnav=y) practitioners only | N/A | Yes [s 146C](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146c%2B0%2BN?tocnav=y) | Yes [s 149B](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149b%2B0%2BN?tocnav=y) practitioner only |
| **Recommend to Tribunal that registration be cancelled** | N/A | N/A | N/A | Yes, in certain circumstances:[s 148G](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148g%2B0%2BN?tocnav=y) | N/A | Yes, in certain circumstances:[s 146D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.3-sec.146d%2B0%2BN?tocnav=y) | N/A |
| **Cancel registration or disqualify practitioner if no longer registered** | N/A | N/A | N/A | N/A | N/A | N/A | Yes [s 149C(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) practitioners[s 149C(2)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) students[s 149C(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y)*Must* cancel practitioner or student’s registration if critical compliance order or condition contravened:[s 149C(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.6-sec.149c%2B0%2BN?tocnav=y) |
| **Award costs** | N/A | N/A | N/A | N/A | N/A | N/A | Yes[cl 13, Sch 5D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bsch.5d%2B0%2BN?tocnav=y) |

# 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?** |
| --- | --- |
| **Council (or Council delegates) conducting proceedings pursuant to ss 150, 150A or 150C** | Written reasons for decision are generally not published by the Council, because the proceedings are confidential and the decision contains “protected information” (defined in [s 214](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.214%2B0%2BN?tocnav=y)) subject to confidentiality provisions: [s 216](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.216%2B0%2BN?tocnav=y)Written reasons for decision are as a matter of course provided to the practitioner concerned and any legal representative: ss [150(6)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150%2B0%2BN?tocnav=y) and [216(2)(d)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.216%2B0%2BN?tocnav=y)Written reasons for decision may be provided to the HCCC: ss [216(2)(b)(i)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.216%2B0%2BN?tocnav=y), [150D(2)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150d%2B0%2BN?tocnav=y) and [150E(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.7-sec.150e%2B0%2BN?tocnav=y) |
| **Impaired Registrants Panel (IRP)** | IRP reports are generally not published by the Council, because they are “*protected reports*” (defined in [s 138](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.1-sec.138%2B0%2BN?tocnav=y)) and therefore subject to stringent confidentiality provisions: [s 176F](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.14b-sec.176f%2B0%2BN?tocnav=y)IRP reports are, as a matter of course, provided to the practitioner concerned and any legal representative.IRP reports may be provided to the HCCC: [s 176F(2)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.14b-sec.176f%2B0%2BN?tocnav=y) |
| **Performance Review Panel (PRP)** | PRP written statements of decision are generally not published by the Council because:1. they contain “protected information” (defined in [s 214](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.214%2B0%2BN?tocnav=y)) prohibited from disclosure by [s 216](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.216%2B0%2BN?tocnav=y); and
2. almost certainly have the character of a protected report (defined in [s 138](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.1-sec.138%2B0%2BN?tocnav=y)), because they invariably disclose the contents of a Performance Assessment Report, and are therefore subject to stringent confidentiality provisions: [s 176F](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.14b-sec.176f%2B0%2BN?tocnav=y)

PRP written statements of decision are provided to the practitioner and any legal representative: [s 156E(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156e%2B0%2BN?tocnav=y)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: [s 156E(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.5-sdiv.4-sec.156e%2B0%2BN?tocnav=y) |
| **Professional Standards Committee (PSC)** | A PSC can order that its statement of decision on inquiry not be made publicly available: [s 171E(5)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.11-sdiv.4-sec.171e%2B0%2BN?tocnav=y)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: [s 171E(4)(a)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.11-sdiv.4-sec.171e%2B0%2BN?tocnav=y)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: [s 171E(4)(b)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.11-sdiv.4-sec.171e%2B0%2BN?tocnav=y). Any publication will, however, be subject to any non-publication direction made by the PSC in accordance with [cl 7 of Schedule 5D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bsch.5d%2B0%2BN?tocnav=y).Statements of decision on inquiry must be provided to the practitioner and any legal representative, the Council and the complainant (usually the HCCC): [s 171E(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.11-sdiv.4-sec.171e%2B0%2BN?tocnav=y)The PSC may also provide a copy to such persons as it sees fit: [s 171E(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.11-sdiv.4-sec.171e%2B0%2BN?tocnav=y)It is open to a PSC to make recommendations to the Council regarding publication of its statement of decision on inquiry. |
| **Tribunal** | A Tribunal can order that its written statement of decision not be made publicly available: [s 165M(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.10-sdiv.4-sec.165m%2B0%2BN?tocnav=y)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: [s 165M(4)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.10-sdiv.4-sec.165m%2B0%2BN?tocnav=y)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: [s 165M(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.10-sdiv.4-sec.165m%2B0%2BN?tocnav=y)Any publication will, however, be subject to any non-publication direction made by the Tribunal in accordance with [cl 7 of Schedule 5D](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bsch.5d%2B0%2BN?tocnav=y).Statements of decision must be provided to the parties and the Council: [s 165M(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.10-sdiv.4-sec.165m%2B0%2BN?tocnav=y)The Tribunal may also provide a copy to such persons as it sees fit: [s 165M(3)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.10-sdiv.4-sec.165m%2B0%2BN?tocnav=y) |
| **Council Inquiry** | Written statements of decision are generally not published by the Council, because they contain “protected information” (defined in [s 214](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.214%2B0%2BN?tocnav=y)) subject to confidentiality provisions: [s 216](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.10-div.2-sec.216%2B0%2BN?tocnav=y)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. 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: [s 148H(1)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148h%2B0%2BN?tocnav=y)A copy must be provided to the HCCC if the HCCC made a submission to the Council with respect to the complaint: [s 148H(2)](http://www.legislation.nsw.gov.au/fragview/inforce/act%2B86a%2B2009%2Bpt.8-div.3-sdiv.5-sec.148h%2B0%2BN?tocnav=y) |

1. [Paragraph 133 of *Health Care Complaints Commission v Perceval* [2014] NSWCATOD 38](http://www.caselaw.nsw.gov.au/action/PJUDG?jgmtid=171085) [↑](#footnote-ref-1)
2. \* A condition requiring counselling/treatment may be imposed. [↑](#footnote-ref-2)
3. \* There is nothing in the Law to preclude making informal recommendations in the decisions. [↑](#footnote-ref-3)
4. \* A condition requiring skills testing may be imposed. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
8. \* A condition requiring skills testing may be imposed. [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. \* A condition may be imposed, however please consider whether such conditions are an appropriate outcome for urgent interim action under s 150. [↑](#footnote-ref-10)
11. \* A condition may be imposed, however please consider whether such conditions are an appropriate outcome for urgent interim action under s 150. [↑](#footnote-ref-11)