

# INFORMATION ABOUT THE REFERRAL OF A COMPLAINT TO THE DIRECTOR OF PROCEEDINGS



## How is a complaint referred to the Director of Proceedings?

At the end of an investigation into the conduct of a registered health practitioner, the Commission must consult with the relevant professional council before deciding what action to take. The Commission may decide to:

- refer the complaint to the professional council
- make comments to the health practitioner,
- terminate the investigation (take no further action)
- or refer the complaint to the Director of Proceedings where it involves serious conduct.

## What is the Director of Proceedings?

The Director of Proceedings is appointed by the Commissioner and is an employee of the Health Care Complaints Commission.

Section 90D of the *Health Care Complaints Act* [the Act] provides that the Director of Proceedings is not subject to the direction and control of the Commissioner in relation to dealing with complaints. This means that the Director of Proceedings makes independent decisions about the complaints referred to her. The Director of Proceedings is legally qualified and the position is currently held by Ms Karen Mobbs.

## What is the role of the Director of Proceedings?

The primary role of the Director of Proceedings is to determine whether a complaint should be prosecuted before a disciplinary body. Disciplinary bodies include Professional Standards Committees and Tribunals.

If a decision is made to prosecute the matter, the Director of Proceedings, with the assistance of the Legal Officers in the Commission's Legal Division will prosecute the complaint. This includes drafting the complaint, referring it to the relevant disciplinary body, presenting the Commission's evidence and prosecuting the matter before the disciplinary body.

The Director of Proceedings also acts as the head of the Legal Division and manages the officers in the Division.

## How does the Director of Proceedings make the determination as to whether a complaint should be prosecuted?

Section 90C of the *Act* states when determining whether or not to prosecute a complaint before a disciplinary body, the Director of Proceedings must consider:

- (a) the protection of the health and safety of the public
- (b) the seriousness of the alleged conduct the subject of the complaint.
- (c) the likelihood of proving the alleged conduct
- (d) any submissions made under section 40 by the health practitioner concerned.

To assist the Director of Proceedings, she is provided with all material obtained by the Commission during its assessment and investigation of the complaint, including any submissions that were received.

### **What does prosecution mean?**

Prosecutions by the Commission are disciplinary, **not** criminal, prosecutions. The prosecution process is governed by the *Health Practitioner Regulation National Law (NSW.) [National Law]*. Complaints can be prosecuted before Nursing and Midwifery Professional Standards Committees, Medical Professional Standards Committees or a Tribunal. There is a separate Tribunal for each registered health profession.

Further information about Committees and Tribunals can be found on the Commission's website [www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au).

### **What are the possible outcomes of a prosecution?**

The National Law provides that a Committee or Tribunal can only make orders or take action in relation to the complaint if it finds it proved. The most serious outcomes are the cancellation or suspension of a practitioner's registration. Other outcomes include cautioning or reprimanding the practitioner, placing conditions on the practitioner's registration and/or imposing a fine.

### **What if the Director of Proceedings makes a determination not to prosecute?**

If the Director of Proceedings determines that a complaint should not be prosecuted before a disciplinary body, she can decide to take no further action. She can also refer the complaint back to the Commissioner to consider other appropriate actions, including:

- referring the complaint to the relevant professional council
- making comments to the health practitioner
- terminating the complaint and taking no further action.

### **How long will it take before a determination is made?**

Before making her determination, all relevant material is carefully examined. The Director of Proceedings must then consider and balance the various criteria mentioned above before recommending to the relevant professional council whether or not a complaint should be prosecuted before a disciplinary body. The Director of Proceedings aims to complete her review of complaints referred to her within three months from the date of the referral.

Sometimes, the Director of Proceedings may need to clarify certain issues and may ask the Investigations Division to obtain further information. In such cases, the Investigations Officer will write to the parties advising them.

Following the review of the matter, the Director is required by the Act to formally consult with the relevant professional

council before making her determination. After this consultation, the parties will be informed in writing of the outcome.

The time taken to complete the determination will vary depending on the complexity of the matter. If a determination has not been made within three months of the complaint being referred, the Director of Proceedings will advise the parties of what, if any, action is being taken and repeat this process every three months until the determination is made.

Should you wish to check on the progress of any matter at any time, you can contact the Director of Proceedings on 9219 7525.

## THE VARIOUS AGENCIES THAT DEAL WITH REGISTERED HEALTH PRACTITIONERS

### The Health Care Complaints Commission

In NSW, the system for dealing with complaints is different to that which exists in the rest of Australia and is governed by the *Health Practitioner Regulation National Law (NSW)*. It provides that in NSW, the complaint handling system is a co-regulatory model involving consultation between the Commission and the appropriate professional council.

The Health Care Complaints Commission is established under the *Health Care Complaints Act 1993*. It is an independent body with responsibility for dealing with complaints involving health

services and health service providers in NSW. The Commission assesses all complaints and has the power to investigate and prosecute serious complaints

### The professional councils

The Commission and the relevant professional council in NSW are co-regulators and are required to consult with each other about the assessment, investigation and prosecution of complaints in NSW.

The Councils can make interim orders affecting a practitioner's registration if they are satisfied that it is appropriate to do so for the protection of the health or safety of any person or persons or is otherwise in the public interest. Any suspension or conditions are imposed under section 150 of the *Health Practitioner Regulation National Law (NSW)*. Once conditions are imposed, the council must generally refer the matter to the Commission for investigation. If conditions relate to a complaint matter, they will remain either until the complaint is finalised or the conditions are removed by the council.

The Commission has no powers to suspend a practitioner or impose conditions on a practitioner's registration. All queries in relation to an interim suspension or conditions should be made to the relevant professional council.

### **The National Boards and the Australian Health Practitioner Regulation Agency (AHPRA)**

Whilst the system for dealing with complaints in NSW is different to that in the rest of Australia, there is a uniform system throughout Australia for dealing with the accreditation and registration of practitioners. All issues relating to the training and accreditation of registered health practitioners are dealt with by the appropriate National Board.

The Australian Health Practitioner Regulation Agency (AHPRA) has been established to assist the various National Boards. All queries relating to registration or applications for renewal should be directed to AHPRA, even if a complaint against a practitioner is being dealt with by the Commission.

Links to the various professional councils, National Boards and AHPRA can be found on the Commission's website [www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au)

#### **Useful links**

**Health Care Complaints Commission**  
[www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au)

**Health Professional Councils (NSW)**  
[www.hpca.nsw.gov.au](http://www.hpca.nsw.gov.au)

**Australian Health Practitioner Regulation Agency (AHPRA)**  
[www.ahpra.gov.au](http://www.ahpra.gov.au)