



Purpose

This policy has been developed to ensure the appropriate and consistent management of **serious** registered practitioner matters at the Office of the Health Ombudsman (OHO).

Application

This policy applies to all OHO employees (permanent, temporary, casual) managing a health service complaint, notification, or other matter involving a registered practitioner.

The policy also applies to circumstances in which the Australian Health Practitioner Regulation Agency (Ahpra) and relevant National Board are required to consult with the OHO about the ongoing management of a matter, where the Board has formed a reasonable belief a registered health practitioner has behaved in a way that constitutes professional misconduct, or there is another ground for the suspension or cancellation of their registration¹.

Legislative provisions

- *Health Ombudsman Act 2013* (the Act)
- *Health Practitioner Regulation National Law (Queensland)* (the National Law).

Related resources

- Retaining serious matters guide (D/234533)
- s91C briefing template (D/235651)

Policy statement

With respect to the management of matters involving a registered practitioner, it is the intention of the Act that all **serious** matters must be retained by the OHO². This includes both serious conduct and/or performance matters. However, there are grounds on which the Health Ombudsman may apply discretionary power to refer a **serious** conduct and/or performance matter to Ahpra and the relevant National Board for management.

When considering the circumstances in which discretion may be applied, it is simply not possible to foresee and deal with all the potential scenarios that might arise. In each individual case, the Health Ombudsman may instead apply a number of decision-making principles to perform an evaluative judgement as to the nature and seriousness of the demonstrated conduct and /or performance to inform their decision.

What is a serious matter?

For the purpose of this policy, the term **serious** is in reference to s91C of the Act.

A **serious** matter is described in s91C as indicating either or both of the following:

¹ s193(1) *Health Practitioner Regulation National Law (Queensland)*

² [Health Transparency Bill 2019 explanatory notes](#).



- the practitioner may have behaved in a way that constitutes **professional misconduct**
- another ground may exist for the **suspension or cancellation** of the registered health practitioner's registration.

The Principles

The paramount guiding principle of the Act

Noting the main guiding principle of the Act is that the **health and safety of the public are paramount**³- this must be the main consideration when deciding what relevant action to take.

Seriousness

Other than in the case of impairment matters which are covered separately further on, this principle centres on the severity of the presenting concerns. Specifically, whether the matter indicates professional misconduct or grounds for suspension/cancellation of the practitioner's registration.

Noting the intention of s91C, unless the application of the other principles provides a compelling case to override this intention, it must be considered that that it is the intention of the Act that a *serious* matter should be retained by the OHO.

Timeliness

While a matter may indicate retention by the OHO when giving consideration to the seriousness and the paramount guiding principle, noting it is also the intention of the Act that the OHO deliver a *transparent, accountable and fair system for effectively and expeditiously dealing with complaints and other matters relating to the provision of health services*⁴, in some cases, timeliness may be a relevant consideration when determining the most appropriate way to deal with a serious matter.

Efficiency

Closely linked with timeliness is the principle of efficiency. It is considered the policy intent to reduce double-handling between the co-regulators. This may be particularly applicable when considering splitting matters⁵; both in terms of the issues in an individual matter, or where multiple matters exist about the same practitioner. In such cases, determining which agency is placed to most efficiently manage the matter may be a relevant consideration.

Effectiveness

Another key principle that may guide a decision is effectiveness, asking which agency is best placed to protect the health and safety of the public in any given circumstance? While it is the intention of the Act that the OHO retain *serious* matters, there are instances where Ahpra and the National Boards may be considered better placed to address the concerns, such as in cases where

³ s4(1) *The Health Ombudsman Act 2013*

⁴ s3(2) *The Health Ombudsman Act 2013*

⁵ Splitting a matter refers to the act of separating a health and a conduct issue under s41 of the Act, and progressing the issues individually, as if separate complaints had been made about each issue type.

the practitioner may be working across multiple jurisdictions, limiting the OHO's effectiveness in holistically managing all concerns relating to the practitioner.

Whether or not there is a health impairment

Where a *serious* conduct and/or performance matter also contains an indication of a health impairment, s91D provides that the Health Ombudsman may either:

- Apply s41 of the Act to split the complaint, refer the impairment to Ahpra as directed under s91B⁶, and retain the *serious* conduct and/or performance concern under s91C; or
- Apply discretion that the conduct and/or performance does not require retention by the OHO.

In determining whether to apply discretion, the same key principles above should be applied. Additionally, consideration should also be given to the impairment, and its relationship to the presenting conduct and/or performance concern/s.

Where there is a clear identifiable relationship between the conduct and/or performance concern/s and the impairment, and there is no indication of an immediate and substantial risk to public safety, consideration may be given as to whether the discretion should be applied to refer both the impairment and conduct and/or performance concerns to Ahpra for holistic management. A consultation with Ahpra may be required to clarify the proposed management of the matter in these circumstances.

Conversely, where the impairment has limited or no bearing on the conduct and/or performance concern, and/or the conduct and/or performance is indicative of immediate substantial risk and/or significant public interest, it may be considered appropriate to split the matter, retaining the conduct and/or performance concerns, and referring the impairment to Ahpra.

The policy intent for matters not to be split between co-regulators

It is considered that in amending the Act and introducing s91C, it was done so with the intention to reduce the need for splitting of matters containing both impairment and conduct and/or performance concerns, improving efficiency between the two regulators, and allowing for a more holistic approach to the management of the complaint⁷. This again becomes a relevant consideration when considering the most appropriate pathway in which both conduct/performance and impairment concerns are identified, as outlined in the previous section.

Public Confidence

One of the objectives of the Act is to maintain public confidence in the management of complaints and other matters relating to the provision of health services⁸.

While this objective is often entwined in the consideration of the other principles, there may also be matters where the need to retain (or refer) will be driven by a consideration of maintaining the public confidence in the health complaint management system.

⁶ s91B *The Health Ombudsman Act 2013*: **Requirement to refer complaint or matter indicating impairment**

The health ombudsman must refer the health service complaint or other matter to the National Agency if it indicates the health practitioner has or may have an impairment

⁷ [Health Transparency Bill 2019 explanatory notes](#).

⁸ s3(1)(c) *The Health Ombudsman Act 2013*

Roles and responsibilities

Health Ombudsman

It is the responsibility of the Health Ombudsman to decide whether to exercise discretion under s91C of the Act to refer a serious matter to Ahpra.

Executive Directors

In certain circumstances, the Health Ombudsman may delegate the responsibility for deciding whether to exercise discretion to refer a serious matter to an Executive Director of the OHO.

Directors

It is the responsibility of Directors to review and forward to the Health Ombudsman all serious matter briefs and recommendations from staff in their work unit, ensuring all necessary prior consultation has been conducted and is reflected in the brief, and the officer has correctly applied and articulated the above decision-making principles in the correct format.

All other staff

Where it is identified by a staff member that a serious registered practitioner matter may be referred to Ahpra for management, it is the responsibility of that staff member to consult with senior staff of any relevant work group, as necessary, before using the appropriate template to prepare a comprehensive brief and recommendations applying the above principles for the Health Ombudsman.

The brief with all relevant documents for consideration attached, should then be forwarded to the staff member's Director for review, before being forwarded to the Health Ombudsman.

Definitions	
Impairment	The term impairment is defined in the National Law as a person having a <i>physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect—</i> • <i>for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or</i> • <i>for a student, the student's capacity to undertake clinical training—</i> (i) <i>as part of the approved program of study in which the student is enrolled; or</i> (ii) <i>arranged by an education provider.</i>
National Board	One of the 15 National Boards recognised under the National Registration and Accreditation Scheme.
Professional misconduct	Professional misconduct , as it relates to a registered practitioner, is defined the National Law as including:



	(a)unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and (b)more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and (c)conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession
Unprofessional conduct	Unprofessional conduct, as it relates to a registered practitioner, is defined the National Law as meaning: professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and includes— (a)a contravention by the practitioner of this Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and (b)a contravention by the practitioner of— (i)a condition to which the practitioner's registration was subject; or (ii)an undertaking given by the practitioner to the National Board that registers the practitioner; and (c)the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession; and (d)providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's well-being; and (e)influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care; and (f)accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider; and (g)offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the practitioner; and (h)referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the practitioner has a pecuniary interest in giving that referral or recommendation, unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation.
Registered Practitioner	A practitioner currently or previously registered under the National Registration and Accreditation Scheme



Unsatisfactory professional performance	<i>Unsatisfactory professional performance</i> , as it relates to a registered practitioner, is defined the National Law as meaning: <i>the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.</i>
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Version control

Version no.	Changes made
1	New policy

Approval

Effective date	24 February 2025
Last reviewed	24 February 2025
Next review	24 February 2028
Contact	Principal Governance and Policy Officer
Custodian	Director, Health Ombudsman's Office
Approved by	Health Ombudsman
Approval date	24 February 2025- working policy. 16 June 2025 Final Approved with minor update.
Signature	
Security classification ⁹	Official

⁹ NB. This footnote is intended to provide guidance when deciding the security classification of information.

Official – routine information without special sensitivity or handling requirements and a low business impact per document if compromised or lost. For example, information that may be shared across government agencies.

Sensitive – information that requires additional handling care due to its sensitivity or moderate business impact if compromised or lost. For example, information containing legal professional privilege.

Protected – information that requires the most careful safeguards due to its sensitivity or major business impact if compromised or lost. For example, cabinet documents.