

Information sheet

Tribunal hearings



April 2019

What you need to know about tribunal hearings

A National Board can refer a matter to a tribunal for hearing. This happens only when the allegations involve the most serious unprofessional conduct (professional misconduct), and a National Board believes suspension or cancellation of the practitioner's registration may be warranted.

If a National Board refers a matter to a tribunal, AHPRA and the National Board encourage the practitioner to seek legal advice and representation through their professional indemnity insurer. Some practitioners also choose to contact their professional association.

The National Law

Under the National Law¹, a National Board must refer a matter about a registered health practitioner or student to a tribunal if the National Board reasonably believes that the practitioner has behaved in a way that constitutes professional misconduct*; or the practitioner's registration was improperly obtained because the National Board was given false or misleading information (section 193). The National Board must also refer the matter to a tribunal if a panel established by the National Board requires it to do so (see also the fact sheet about panels www.ahpra.gov.au/Notifications/Fact-sheets/Panel-hearings).

* Professional misconduct includes one or more instances of unprofessional conduct that amounts to conduct substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and conduct inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

Tribunals in each state and territory

There are tribunals in each state and territory (listed below) and the National Board must refer a matter to the tribunal in the state or territory where the behaviour occurred. If the behaviour occurs in more than one state or territory, the responsible tribunal is the one where the practitioner's principal place of practice is located.

Tribunals in each state and territory

State/Territory	Tribunal
New South Wales	Civil and Administrative Tribunal
Australian Capital Territory	Civil and Administrative Tribunal
Northern Territory	Civil and Administrative Tribunal
Queensland	Civil and Administrative Tribunal
South Australia	Civil and Administrative Tribunal
Tasmania	Civil and Administrative Tribunal
Victoria	Civil and Administrative Tribunal
Western Australia	State Administrative Tribunal

Notice

A National Board, through AHPRA, must give the practitioner or student to whom the matter relates written notice that it has referred a matter to a tribunal.

Procedure

Tribunals are independent of the National Boards and AHPRA. When a National Board has referred a matter to a tribunal, the tribunal is responsible for determining the timeframe of hearings, conducting the hearing and delivering the tribunal's final decision. This decision is usually published on the tribunal's website and referenced in legal information resources such as Austlii. AHPRA also publishes a link to the decision from its website.

By law, tribunal proceedings are open to the public. Any decision made to suppress identifying information about the practitioner is made by the tribunal.

¹ The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Composition

A tribunal is generally made up of members of the same profession as the health practitioner whose behavior is under review, a non-health practitioner member and a judicial officer.

Parties to the proceedings and representation

Practitioners who are the subject of a tribunal hearing are usually represented by a lawyer. The National Board that referred the matter to the tribunal will also be legally represented. AHPRA and the National Boards encourage practitioners to seek legal advice and representation if a matter involving them has been referred to a tribunal.

Tribunal decisions and actions (practitioner)

After hearing a matter a tribunal has the power to decide:

- that the practitioner has no case to answer and no further action is to be taken, or
- one or more of the following:
 - the practitioner's behaviour constitutes unsatisfactory professional performance
 - the practitioner's behaviour constitutes unprofessional conduct
 - the practitioner's behaviour constitutes professional misconduct
 - the practitioner has an impairment, or
 - the practitioner's registration was improperly obtained because the National Board was given false or misleading information.

Having made one of these decisions (other than 'no case to answer'), the tribunal may decide to do one or more of the following:

- caution or reprimand the practitioner
- impose a condition on the practitioner's registration**
- require the practitioner to pay a fine of up to \$30,000 to the National Board
- suspend the practitioner's registration for a specified period
- cancel the practitioner's registration. If a tribunal decides to cancel a person's registration or the person does not hold registration under the National Law, the tribunal may also decide to
 - disqualify the person from applying for registration for a specified period, or
 - prohibit the person from using a specified title or providing a specified health service.

** If the tribunal imposes a condition on the practitioner's registration it must also decide on a review period.

Tribunal decisions and actions (student)

After hearing a matter about a student, a tribunal may decide:

- the student has an impairment, or
- the student has no case to answer and no further action is to be taken.

If the tribunal decides that the student has an impairment, it may decide to:

- impose a condition on the student's registration, or
- suspend the student's registration.

Costs

The tribunal may make any order about costs it considers appropriate. This may result in the practitioner or student being ordered to pay the National Board's costs as well as their own costs, or the reverse.