

DELEGATIONS MANUAL

Osteopathy Council of New South Wales

22 February 2016

Osteopathy Council of NSW

INTRODUCTION

Section 41J of the Health Practitioner Regulation National Law (NSW) gives each of the Health Profession Councils a general power to delegate its functions. Statutory functions of a Council's Executive Officer may also be delegated. Appropriate delegation of functions and powers is necessary for effective and efficient administration of the Councils' business.

With the above principle in mind this delegations manual has been compiled to clearly set out the delegation of functions and powers by the Osteopathy Council of NSW (the Council) and its Executive Officer.

Delegation Power

The delegations in this manual are by the Council in accordance with section 41J of the Health Practitioner Regulation National Law (NSW).

Section 41J provides:

- (1) A council may delegate to a person the exercise of any of its functions, other than this power of delegation.*
- (2) An Executive Officer of a Council may delegate to a person the exercise of*
 - a. Any of the functions of the Executive Officer under this Law, other than this power of delegation; or*
 - b. Any functions delegated to the Executive Officer by the Council, unless the Council otherwise provides in its instrument of delegation to the Executive Officer.*
- (3) In this section, a reference to a person includes a reference to a group of persons, including a committee.*

Delegates are expected to exercise the powers, authorities, duties or functions delegated to them in a responsible, efficient and consistent manner and in accordance with any conditions to which the delegation is subject. Whether delegation should be exercised in a particular case, or the matter referred to the Council, requires the exercise of discretion by the delegate. Assistance or direction may be sought from Executive or Legal Services in matters that have special features or are considered of special importance.

If delegation is made to a committee the Council will need to ensure that it can effectively prove the establishment of the committee and the appointment of the members so that exercise of the functions will withstand challenge.

When exercising a delegation, the delegate must ensure that he/she is fully aware of the relevant provisions of the Law before exercising the delegation. The delegate, may, in the performance of a delegated function, do anything that is incidental to the delegated function.

It should be noted that functions that are delegated by a Council may, despite the delegation, be exercised by the Council and that delegation of a function does not relieve the Council of the obligation to ensure that the function is properly exercised.

A function delegated by a Council to its Executive Officer may be sub-delegated by the Executive Officer, unless the Council otherwise specifies in its instrument of delegation to the Executive Officer. In all other respects sub-delegation is only permitted if expressly provided for in the primary delegation.

Delegation Format

Each delegation is outlined on an individual page for ease of reference and also to allow amendments to be made to an individual delegated power. Each delegation contains a synopsis of what the delegation is empowering; a reference to the relevant section/s of the Health Practitioner Regulation National Law (NSW) providing for the exercise of power or function; and specifies the delegates with the authority to exercise that power or function.

Officers Acting or Relieving in Other Positions

If a function is delegated to a specified officer, another officer acting or relieving for the officer is entitled to exercise the delegated functions of the officer no matter the duration of the period of acting or relieving. The officer so acting or relieving does not have to be entitled to the payment of a higher duties allowance. Officers when exercising another officer's delegation are to sign and indicate that they are acting in the higher position.

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COMPLAINTS

Delegation C-1 - Complaints - Consultation

Power to consult with the Health Care Complaints Commission to see if agreement can be reached as to the course of action to be taken concerning the complaint.

Determination of the most appropriate course of action available to the Council.

Refer sections 145A and 145B of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

EXECUTIVE OFFICER

A REGISTERED OSTEOPATH APPOINTED BY THE EXECUTIVE OFFICER

Delegation C-2 - Complaints – Decision not to refer under Part 8, Division 3, Subdivision 2 – Practitioner or Student not registered

Determination not to refer a complaint under Part 8, Division 3, Subdivision 2 of the Health Practitioner Regulation National Law (NSW) on the basis that the practitioner or student concerned has ceased to be registered.

Refer section 145I of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation C-3 - Complaints – Not to refer under Part 8, Division 3, Subdivision 2 – Complainant fail to provide further particulars

Determination not to refer a complaint under Part 8, Division 3, Subdivision 2 of the Health Practitioner Regulation National Law (NSW) if the complainant has failed to provide further particulars in response to a request by the Council or the Health Care Complaints Commission.

Refer section 145J of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation C-4 - Complaint – Health Practitioner or Student to undergo examination

Power to direct a practitioner or student to undergo an examination by a specified registered health practitioner at a specified reasonable time and place.

Refer section 145E of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

SECTION 150

Delegation s150-1 -Section 150 – appointment of Delegates

Appointment of delegates for purposes of exercising the Council’s powers under sections 150(1), 150A or 150C of the Health Practitioner Regulation National Law (NSW).

Refer section 150(7) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

EXECUTIVE OFFICER

Delegation s150-2 - Section 150 – Refuse review of decision

Power to refuse to reconsider a decision made under section 150(1) of the Health Practitioner Regulation National Law (NSW) on the basis that the application for review is frivolous or vexatious.

Refer section 150A(2)(a) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation s150-3 - Section 150A– Review of decision

Power to review a decision made under section 150(1) of the Health Practitioner Regulation National Law (NSW).

Refer section 150A of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL (at least one of whom must not be and have never been registered as an osteopath or osteopathy student)

2 OR MORE PERSONS APPOINTED BY THE EXECUTIVE OFFICER IN ACCORDANCE WITH S.150(7)

Delegation s150-4 - Section 150 – Remove or alter conditions or end suspension

Power to alter or remove conditions or end suspension imposed under section 150(1) of the Health Practitioner Regulation National Law (NSW).

Refer section 150C of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL (at least one of whom must not be and have never been registered as an osteopath or osteopathy student)

2 OR MORE PERSONS APPOINTED BY THE EXECUTIVE OFFICER IN ACCORDANCE WITH S.150(7)

Delegation s150-5 - Section 150 – obtain information, records and evidence

Power to require a person to produce documents, records or evidence that would assist in making a decision about action to be taken under section 150(1) of the Health Practitioner Regulation National Law (NSW).

Refer section 150J of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following:

THE DELEGATES APPOINTED TO EXERCISE POWERS UNDER SECTION 150(1) OF THE LAW

EXECUTIVE OFFICER

HEALTH

Delegation H-1 - Health – Practitioner to undergo an examination

Power to require a practitioner to undergo an examination by another registered health practitioner.

Refer section 152B of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation H-2 - Health – Student to undergo an examination

Power to require a student to undergo an examination by another registered health practitioner.

Refer section 152C(1) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation H-3 - Health – Suspend student registration

Power to suspend a student's registration, until the student undergoes the examination, if the student fails to comply with the requirement of undergoing examination without reasonable excuse.

Refer section 152C (4) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation H-4 - Health – Referral to an Impaired Registrants Panel

Power to refer a matter to an Impaired Registrants Panel, if the matter indicates a registered practitioner or student has or may have an impairment.

Refer section 152D of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

Any of the following

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation H-5 - Health – Establishment of an Impaired Registrants Panel

Appointment of persons to sit as the Impaired Registrants Panel for the purpose of dealing with a matter referred to an Impaired Registrants Panel.

Refer section 173A of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

EXECUTIVE OFFICER

Delegation H-6 - Health – Voluntary suspension or conditions on registration

Power to impose conditions or suspend a practitioner or student's registration, if recommended by an Impaired Registrants Panel and the practitioner or student has voluntarily agreed to the conditions or suspension.

Refer section 152J of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY MEMBER OF THE COUNCIL

Delegation H-7 - Health – Review of conditions and suspension

Following a recommendation by an IRP:

Power to refuse to alter or remove conditions; or

Power to refuse to terminate or shorten a suspension.

Power to specify a period in which a further request by the practitioner or student for removal of conditions or termination or shortening of suspension period is not permitted.

Refer sections 152K(3) and (5) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

Delegation H-8 - Health – Prohibition or conditions on student registration in the public interest

Power to suspend a student's registration, or impose specific conditions on student's registration, if recommended by an Impaired Registrants Panel and it is in the public interest to do so.

Refer section 152M of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

PERFORMANCE

Delegation P-1 - Performance – Performance assessment

Power to have the professional performance of a practitioner assessed.

Refer section 154 of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation P-2 - Performance – Appointment of performance assessors

Appointment of suitably qualified persons to be assessors for the purposes of conducting a performance assessment of a registered practitioner.

Refer section 174D of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

EXECUTIVE OFFICER

Delegation P-3 - Performance – Performance assessor’s certificate of authority

Approval of certificate of authority for performance assessors.

Refer Schedule 5B clause 7 of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

EXECUTIVE OFFICER

Delegation P-4 - Performance – Action following a performance assessment

Power to take any action, as provided in section 155C (1) of the Health Practitioner Regulation National Law (NSW), after receiving the performance assessment report.

Refer section 155C of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation P-5 - Performance – Establishment of Performance Review Panel

Appointment of 3 persons to sit as the Performance Review Panel for the purpose of a matter referred for performance review.

Refer section 174A of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

EXECUTIVE OFFICER

Delegation P-6 - Performance – Appointment of assessors to assist a Performance Review Panel

Appointment of one or more assessors to assist the Performance Review Panel with the performance review.

Refer Schedule 5B clause 13 of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

EXECUTIVE OFFICER

Delegation P-7 - Performance – Complaint following consideration by a Performance Review Panel

Power to make a complaint in respect of a matter that has been considered by a Performance Review Panel.

Refer section 156C (5) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation P-8 - Performance – Distribution of a Performance Review Panel's statement of decision

Determination to provide a copy of a Performance Review Panel's statement of decision to the persons that the Council thinks fit.

Refer section 156E of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

Delegation P-9 - Performance - Monitoring

Power to take any action under the Law, following the monitoring and evaluation of the effectiveness of conditions imposed by a Performance Review Panel.

Refer section 157 of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

ENFORCEMENT

Delegation E-1 - Enforcement – Approval for an authorised person to enter premises

Approval for an authorised person to enter and inspect specified premises being used for the carrying on of the practice of osteopathy.

Refer section 164A (2) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

Delegation E-2 - Enforcement – Further information from Practitioner or Student

Power to require a practitioner or student to provide further information about any complaint or other matter concerning the practitioner or student.

Refer section 164G of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL

PRESIDENT

EXECUTIVE OFFICER

TRIBUNAL

Delegation T-1 - Tribunal – Constitution of the Tribunal

Selection of persons for appointment as occasional members of NCAT for specified proceedings.

Refer section 165B (1) (b) of the Health Practitioner Regulation National Law (NSW).

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

EXECUTIVE OFFICER

MISCELLANEOUS

Delegation Misc-1 - Miscellaneous – Approve employment preconditions

Provide approval in circumstances where conditions on a practitioner's registration or orders made by an adjudication body require the the Council's approval of a specific action or thing relating to the employment of the practitioner.

Refer to individual conditions imposed on practitioners' registration or orders made on practitioners by an adjudication body under the Health Practitioner Regulation National Law (NSW) relating to the employment of the practitioner.

Authority for delegation comes from the Council under section 41J of the Health Practitioner Regulation National Law (NSW).

DELEGATES:

ANY 2 MEMBERS OF THE COUNCIL