

# ACT Health Procedure – Loss of Mandatory Qualifications or Registration

Dear Member,

Attached is an ACT Health draft procedure for the Loss of Mandatory Qualifications or Registration that has been sent to the HSU for the purpose of consultation.

## Member feedback requested

The HSU industrial team is currently reviewing the draft procedure and its impact on members and is seeking feedback, views and comments from members.

Please review the attached document and provide comment and feedback by close of business **Monday 3 September 2018** to HSU Industrial Officer Julie Gordon on [julie.gordon@hsu.asn.au](mailto:julie.gordon@hsu.asn.au) with subject line *Feedback re Loss of Mandatory Qualifications or Registration*.

Please distribute this newsletter to your work colleagues for their information and comments.

**Not a member of the HSU? Now is time to join and have your say! You can join online at [www.hsu.asn.au/join](http://www.hsu.asn.au/join) or call 1300 HSU NSW and join over the phone.**

A union's effectiveness and negotiation power depends on the strength and density of its membership base. Join your work colleagues today by becoming a member of the Health Services Union and help us continue to protect and improve your working life.

In unity,



Gerard Hayes  
Secretary, HSU NSW/ACT/QLD

# ACT Health

## Procedure

### Loss of mandatory qualifications or registration

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## Purpose

This document sets out the procedures to be followed when an employee of ACT Health has had their registration or qualification revoked, suspended, or had conditions applied, or where they have failed to renew a registration, where that registration or qualification is a condition of their employment.

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## Scope

This procedure applies to all ACT Health employees, including those who are permanent, temporary or casual, whose employment conditions include mandatory registration or certification of qualifications.

While its main focus is on health professionals, it also encompasses administrative staff whose employment conditions include some form of mandatory qualification.

The procedure is complementary to the Annual Renewal of Health Practitioner Registration policy and associated procedures.

Not included are matters related to requirements that staff undergo a National Police Check or Working with Vulnerable People Checks. These are detailed elsewhere.

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## Roles and Responsibilities

It is the **individual employee's** responsibility to:

- Work within their scope of practice and conditions of registration;
- Advise their line manager or professional lead no more than 24 hours after any change to their registration or qualifications relevant to mandatory employment conditions; and
- Immediately abide by any conditions, limitations, restrictions, suspension or revocation of registration or qualification.

It is the responsibility of the **line manager** to:

- Immediately advise the relevant workforce lead or executive of any changes in an employee's registration status including conditions, limitations, restrictions, suspension or revocation;
- Instruct the employee to cease any duties which they are no longer qualified to perform; and

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- Maintain accurate file records for information management, auditing and accreditation purposes.

It is the responsibility of the **workforce lead** or **executive** to:

- Provide support and advice to any practitioner whose registration conditions necessitate a change in either duties, scope of clinical practice or ability to continue practice;
- Work collaboratively with line managers and the Executive Director, People and Culture to manage situations where a condition on an individual’s registration either limits or otherwise constrains their scope of clinical practice; and
- Maintain accurate and up to date records of any conditions or restrictions placed on registration, and ensure that allocated duties fall within an individual’s prescribed scope of practice and that monitoring systems are in place.

It is the responsibility of the Executive Director of **People and Culture** to:

- Work collaboratively with the workforce lead and the employee on a management plan to ensure that they work within the permitted scope of clinical practice;
- Identify options for re-assignment, redeployment, access to leave or other actions within the scope of ACT Health’s legal obligations; and
- Ensure full documentation of meetings held, actions taken and correspondence sent, and ensure that records are included on the employee’s personal file.

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## Procedure

This procedure is governed by the provisions of the *Public Sector Management Act 1994*, the *Public Sector Management Standards 2016*, and ACT Public Sector Enterprise Agreements. In essence the Act states that a person is only eligible for employment in the ACT Public Service if they hold “all qualifications required to lawfully exercise every function that the person is, or will be, appointed, engaged or employed to exercise”.

If an employee has qualifications of registration which are mandatory for their position revoked, suspended, restricted or they are not renewed, meaning that in practical terms the employee is no longer qualified to perform the duties of their position, the redeployment process detailed in section 122 of the *Public Sector Management Act 1994* may be enlivened. If efforts to redeploy an employee under section 122 are unsuccessful, this may lead to the reduction in classification or retirement of the employee under section 123 of the Act.

However such action should only follow an assessment, on a case-by-case basis, of the nature and likely duration of the loss of mandatory qualifications or registration, and the particular duties of the position.

This procedure details the steps to be followed prior to any action being taken under section 122, and is set out in the flowchart at [Attachment 1](#).

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In all cases, the line manager and workforce lead or executive will liaise with and seek the advice of People and Culture on the actions taken or proposed to be taken.

When a line manager becomes aware that a health practitioner or other employee no longer holds qualifications or registration that are mandatory to their employment, they must immediately instruct them to cease carrying out all duties within the scope of that change.

If the employee is a casual or probationary employee, or a temporary employee with contracts of less than two years, their appointment/ contract may be terminated (*Public Sector Management Act 1994* sections 70(4), 71B(5), 110(3), 111(3)), though consideration should first be given to the unfair dismissal provisions of the *Fair Work Act 2009*, which can apply to temporary employees and certain casual employees.

In all other cases, where the matter involves a health practitioner, the line manager, in collaboration with the employee, must complete a Notification Form for Conditions on Health Practitioner Registration (see *Annual Renewal of Health Practitioner Registration* policy) and submit a copy to the relevant workforce lead (Chief Medical Officer, Chief of Clinical Operations, Chief Nursing and Midwifery Officer or Chief Allied Health Officer). This must include a management plan for ensuring that the employee meets these requirements and works within the permitted scope of practice.

Where the matter involves an employee who is not a health practitioner, the line manager, in collaboration with the employee, must prepare a written notification to the relevant executive which details the nature of the loss of qualification or registration, the reasons for and permanency or otherwise of the loss, and a proposed management plan for ensuring that the employee works within the permitted scope of duties.

The management plan must include consideration of the nature of the change in the employee's qualifications – that is, whether the registration or qualifications no longer held prevent the practitioner or other employee from lawfully performing their duties or merely restricts the tasks they can perform. In the latter case it may be possible to redesign their duties to exclude what they can no longer perform.

Where a suspension or conditions may be lifted or removed after a period of time, where there is an appeal or review of the initial decision, or where the employee has failed to renew their registration and intends to address this, embarking on the redeployment process in section 122 of the *Public Sector Management Act 1994* may be premature.

Where for example a clinician is awaiting the outcome of an AHPRA matter, while there is no legal obligation to do so, ACT Health may temporarily reassign them to alternative duties provided they are lawfully able to perform them, or invite them to apply for leave pending resolution of the matter. Such arrangements should be regularly reviewed and where the matter remains unresolved, or where an appeal is unsuccessful, consideration should be given to the application of section 122 of the *Public Sector Management Act 1994*.

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On the other hand, where an essential qualification has been cancelled, suspended or conditions imposed, meaning that in practical terms the employee is no longer qualified to perform the duties of their position, and this is unlikely to change in the foreseeable future, the redeployment process in section 122 of the *Public Sector Management Act 1994* should be followed.

### **Potential misconduct**

If loss of mandatory qualifications or registration resulted from actions that could be considered misconduct, the procedures detailed under the ‘misconduct and discipline’ provisions of the relevant Enterprise Agreement should be followed.

Under these provisions, the Head-of-Service/Director-General may suspend an employee with or without pay where they are satisfied that it is in the public interest, the interests of the ACTPS or the interests of ACT Health that the employee be suspended while the alleged misconduct is investigated. Suspension without pay will generally only apply where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the head of service be incompatible with the continuation of the employee’s employment.

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## **Implementation**

This Procedure will be included on the ACT Health intranet on the Policy Register.

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## **Evaluation**

### **Outcome Measures**

- Instances of change of status of the registration of health practitioners are managed appropriately and efficiently.

### **Method**

- People and Culture maintain a database of all reported changes of registration status of employees and the action taken, and report to DDGs as required.

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## **Related Policies, Procedures, Guidelines and Legislation**

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*What ACT Health policies/procedures/guidelines and ACT legislation are related to this body of work*

### **Policies**

Annual Renewal of Health Practitioner Registration  
Senior Medical and Dental Practitioners – Appointment and Credentialing  
ACT Health P&C Delegations Manual

### **Procedures**

Annual Renewal of Health Practitioner Registration – Allied Health  
Annual Renewal of Health Professional Registration – Nurses and Midwives  
Credentialing and Defining the Scope of Clinical Practice for Allied Health Professionals

### **Standards**

Public Sector Management Standards 2016  
ACT Public Service Code of Conduct  
ACT Health P&C Delegations Manual

### **Legislation**

*Public Sector Management Act 1994*  
*Health Practitioner Regulation National Law (ACT) Act 2010*  
All ACT Public Service Enterprise Agreements, 2013–2017

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## **Definition of Terms**

### **Essential/mandatory registration or qualification**

A professional registration qualification that the employee must hold in order to lawfully perform their duties, or as a prerequisite to a function that is a necessary part of their employment. The dictionary to the PSM Act defines ‘qualification’ as including the following:

- (a) an academic qualification;
- (b) an apprenticeship;
- (c) a licence;
- (d) membership of a professional body;
- (e) a registration;
- (f) a security clearance.

### **Eligible person**

A person who holds all qualifications required to lawfully exercise every function that the person is, or will be, appointed, engaged or employed to exercise.

### **Condition**

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A National Board or an adjudication body can impose a condition on the registration of a practitioner or student, or on an endorsement of registration. A condition aims to restrict a practitioner’s practice in some way.

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## Search Terms

Professional, registration, qualification, conditions, mandatory, suspension

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## Attachments

Attachment 1: Flowchart – Change of status of essential qualification or registration

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*Policy Team ONLY to complete the following:*

<i>Date Amended</i>	<i>Section Amended</i>	<i>Divisional Approval</i>	<i>Final Approval</i>

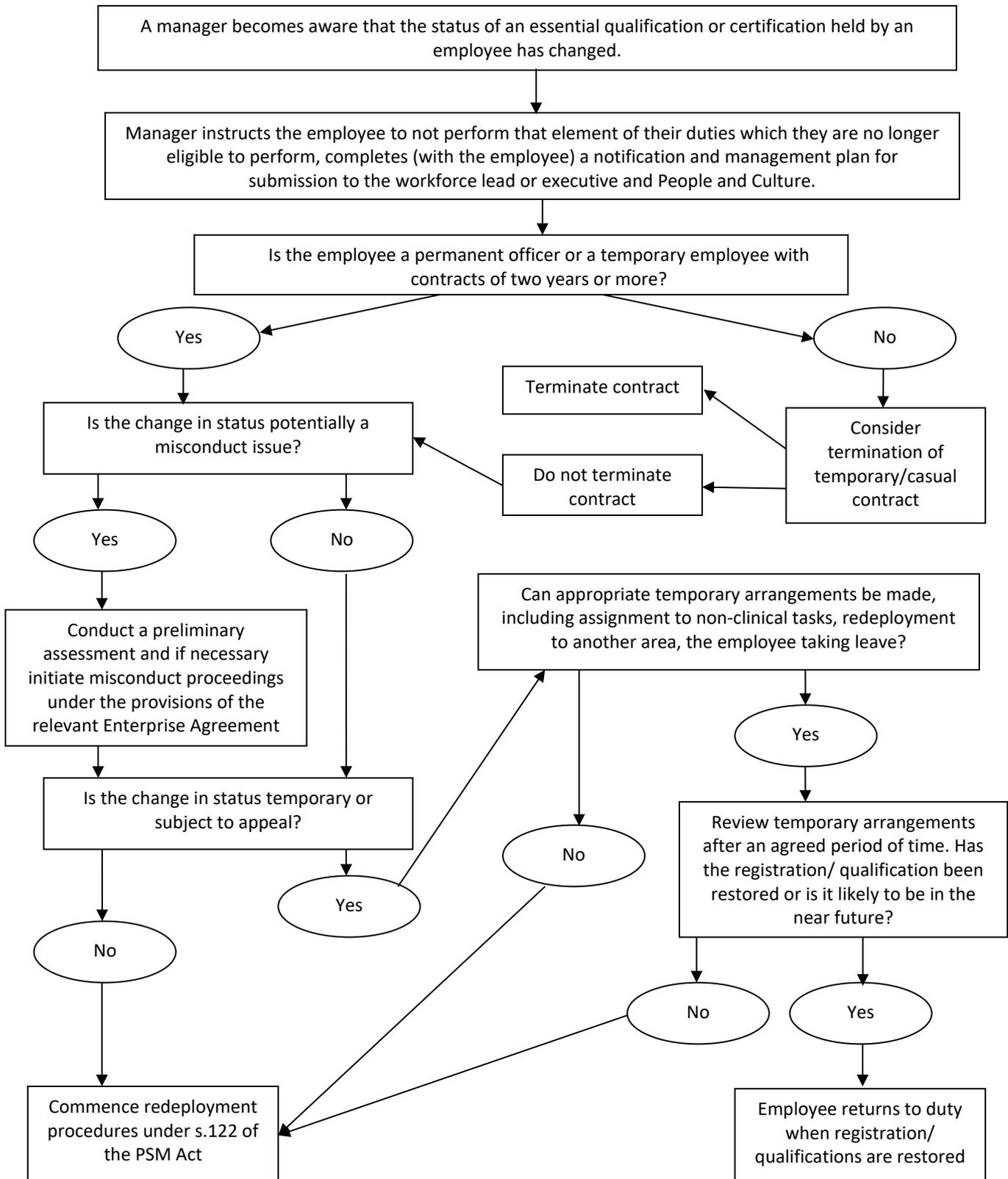
*This document supersedes the following:*

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**Attachment 1**

**Flowchart – Change of status of essential qualification or registration**



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