Draft only

Guidance - Sexual Misconduct and the National Law

Purpose

National Boards unequivocally reject all forms of sexual misconduct by registered health practitioners. Such behaviour represents a serious violation of professional and ethical standards and constitutes a significant betrayal of trust placed in practitioners by patients/clients, colleagues, and the community.

Sexual misconduct undermines the safety and integrity of healthcare environments, placing patients/clients, the public, and healthcare staff at risk. The National Boards are committed to taking decisive regulatory action to prevent harm, uphold public confidence, and ensure that practitioners are held accountable for breaches of professional conduct.

Ahpra is also committed to addressing these harms through strong regulatory action, education, and collaboration with the health sector to prevent future misconduct and protect the public.

Sections 225A and 225B of the *Health Practitioner Regulation National Law* (National Law) will require National Boards to include additional information on a practitioner's record on the National Register of Health Practitioners (National Register) if that practitioner has been found by a tribunal to have engaged in professional misconduct that involves sexual misconduct. This measure ensures that such findings are transparently recorded and remain accessible to the public indefinitely. Importantly, the sexual misconduct does not need to be the sole or primary basis for a tribunal deciding that a practitioner has engaged in professional misconduct. Further, if the matter involves other types of conduct, it is not material whether the tribunal considered or decided that the sexual misconduct alone constituted professional misconduct. The term 'sexual misconduct' is not defined in the National Law. A wide range of behaviours may potentially fall within the meaning of the term and so a definition would have to be either over-simplified or highly prescriptive. Further, the context of the behaviour is important in determining whether it amounts to sexual misconduct a definition may not be able to properly address that.

In the absence of a statutory definition, the National Boards apply a consistent set of principles and examples to guide regulatory determinations. This guidance explains how the National Boards will determine whether behaviour constitutes sexual misconduct by registered health practitioners. It defines the scope, impact, and serious consequences of such misconduct and reinforces the commitment of the National Boards to protecting public health and safety.

Importantly, in determining whether the conduct is sexual misconduct, National Boards will construe the relevant tribunal decision in the context of the main guiding principle of the National Law, namely the protection of the public and public confidence in the safety of services provided by registered health practitioners. This means that in determining whether the conduct giving rise to the finding of professional misconduct is sexual misconduct, National Boards will take into account whether such a finding will assist to protect the public and maintain confidence in the profession.

What Is Sexual Misconduct?

'Sexual misconduct' is a broad term which encompasses the wide range of behaviours that fall within the ordinary meaning of the term.

Sexual misconduct frequently involves a breach of trust, abuse of power, or exploitation of professional relationships—most notably within the practitioner–patient dynamic. However, it is not limited to conduct within practice settings.

Sexual misconduct also encompasses inappropriate or unlawful behaviour outside of practice, including criminal sexual offences, which may indicate a serious risk to public safety and professional integrity.

Categories of Sexual Misconduct

Sexual misconduct may include, but is not limited to:

- violation by a practitioner of a professional boundary between the practitioner and a person under the practitioner's care that could be considered sexual such as:
  - any of the following that is not clinically indicated –
    - touching, including stroking, caressing, or massaging;
    - intimate physical examination;
    - asking or directing a person to fully or partially undress (or otherwise not respecting a person's privacy or modesty);
    - seeking or obtaining a sexual history;
    - making sexual comments, suggestions, or gestures;
    - disclosing the sexual history (or sexual activity or interests) of the practitioner or another person, real or fictional;
    - distributing, sending, displaying, making, or requesting any sexually explicit images, messages or audio/video recordings;
  - conducting an intimate physical examination without properly informed consent;
  - conveying a desire or willingness to enter a sexual relationship;
  - hugging or kissing ;
  - engaging in sexual humour or innuendo;
  - engaging in any form of sexual activity;

- engaging in sexual behaviours in the presence of the person, either directly or remotely by means of communications technology;
- sexual exploitation, abuse or harassment;
- using digital platforms, including social media, to send inappropriate messages, images, or solicitations of a sexual nature to patients/clients;
- conduct that facilitates or attempts to facilitate a sexual act or formation of a sexual relationship ('grooming'), including by contacting the person electronically or via social media.

Sexual misconduct may occur in relation to a person under the practitioner's care even if the person consents to, initiates, or willingly participates in the conduct.

- conduct by a practitioner, in the practice of the practitioner's profession, that relates to a person other than a person under the practitioner's care. This may include, but is not limited to:
  - any violation by a practitioner of a professional sexual boundary between the practitioner and carer of, or other person close to (including family members), the person under the practitioner's care;
  - any violation by a practitioner of a professional sexual boundary between the practitioner and person previously under the practitioner's care;
  - workplace sexual abuse, harassment, or impropriety;
  - engaging in intimate and/or sexual relations with colleagues where workplace hierarchies, supervisory roles, or other professional pressures undermine genuine consent or create a coercive environment;
  - making sexually suggestive comments, jokes, or innuendos, particularly where such behaviour tests or crosses professional boundaries and creates a hostile, uncomfortable or unsafe environment;
  - using digital platforms, including social media, to send inappropriate messages, images, or solicitations of a sexual nature which are unsolicited or unwelcome to colleagues.
- conduct that constitutes a criminal offence, whether committed in connection with the practice of the practitioner's profession or not. This may include, but is not limited to:
  - sexual assault, rape, stalking or harassment, including unwanted advances, persistent unwanted communication, or physical contact.
  - other unlawful conduct of a sexual nature including production, possession and/or distribution of unlawful sexual material such as child exploitation material and unlawful pornographic material.

The behaviour may be sexual misconduct whether or not the practitioner has been charged with, pleaded guilty to, was found guilty of, or was convicted of a criminal offence.

These examples illustrate that sexual misconduct is not limited to explicit acts like assault or harassment. It includes a spectrum of behaviours that may appear subtle or, to some, benign but can still cause harm and violate ethical standards. The above examples highlight the importance of context, power dynamics, and the need for clear professional guidelines to protect both patients/clients and practitioners.

In situations where sexual misconduct is not immediately evident, the Board will determine whether the conduct is sexual misconduct by taking into account a range of contextual and behavioural factors, including but not limited to:

- The nature and location of any physical contact - The context in which physical contact occurs, especially involving intimate areas, can raise concerns, even if not overtly sexual. The Board will assess whether the contact was appropriate, necessary, and conducted with respect for professional boundaries.

- Whether the conduct was clinically justified within the context of the practitioner's role. Physical or intimate contact must be clearly justified by clinical need. If the behaviour falls outside the scope of the practitioner's role or lacks proper clinical basis, it may be considered inappropriate, even if not explicitly sexual and even if there is no evidence of sexual intent.

- The experience and perception of those affected - How the behaviour was experienced and interpreted by the person affected is relevant. If the individual felt the conduct was sexual or inappropriate, this perception will be taken seriously, regardless of the practitioner's stated intent.

- Statements and findings made by the relevant tribunal - Statements or determinations made by relevant tribunals provide important legal and contextual insight. These findings help clarify whether the conduct breached professional or legal standards. However, it is important to note that it is ultimately the Board's decision as to whether proven professional misconduct involved sexual misconduct.

- Sexual intent - The Board will evaluate whether the practitioner's behaviour was intended to arouse or gratify sexual desire. This includes assessing gestures, language, or actions that may have had a sexual undertone, even if the practitioner denies such intent. While sexual intent may cause conduct to be regarded as sexual misconduct, the absence of clear sexual intent does not necessarily rule out sexual misconduct.

- Power imbalance - The inherent authority of a practitioner over a patient/client or subordinate can compromise the ability to give genuine consent. Any exploitation of this imbalance, whether subtle or overt, may be an indication of sexual misconduct.

- Nature of the relationship - Relationships marked by emotional, financial or legal dependence or vulnerability, due to illness, trauma, or personal circumstances, are particularly sensitive. The Board will consider whether the practitioner took advantage of this dynamic.

- Context and timing - The timing and setting of the behaviour are key to understanding intent and appropriateness. Sexual misconduct may occur during or after the formal care relationship has ended.

- Duration and type of care - Long-term or emotionally intensive care relationships (e.g., psychological therapy) can increase vulnerability. The longer and more intimate the therapeutic relationship, the greater the risk that any subsequent sexual conduct is unethical.

Each case is reviewed individually by the Board, with regard to all of the relevant circumstances, including cultural sensitivities and the perspective of those affected by the conduct.

What Will Be Published?

If a tribunal finds a practitioner guilty of professional misconduct involving an element of sexual misconduct, the following will be published on the public register:

- A statement that the practitioner engaged in sexual misconduct
- Any penalties or sanctions (like a reprimand, imposition of conditions, suspension or cancellation of registration)
- A link to the tribunal's decision (if available).

If the practitioner's registration has been cancelled or the practitioner is no longer registered, the register may also show:

- If they are banned from reapplying for registration
- How long they are banned for
- If they are banned from providing health services or using certain titles.

Who Does This Apply To?

All health professions regulated by Ahpra and the National Boards. It applies equally in Queensland and New South Wales despite the co-regulatory arrangements in those jurisdictions.

The amendments to the *National Law* apply retrospectively. This means that they apply from when a health profession was first regulated under the National Registration and Accreditation Scheme:

- 1 July 2010 – chiropractic, dental (including dentist, dental therapist, dental hygienist, dental prosthetist, and oral health therapist), medical, midwifery, nursing, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry, and psychology
- 1 July 2012 – Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice, and occupational therapy
- 1 December 2018 – paramedicine.