Ahpra & National Boards

Guidance

Sexual Misconduct and the National Law

December 2025

CONTENT WARNING. The material in this Guidance contains references to and explanations of sexual misconduct that some readers might find distressing.

If you need help, support is available.

You can access 24-hour phone and online support services from the national sexual assault, family, and domestic violence helpline: 1800 Respect.

13YARN can provide crisis support for Aboriginal and Torres Strait Islander Peoples.

Registered health practitioners who have had a concern raised about them are encouraged to contact their insurer, professional association or legal adviser for guidance and support. We publish information on general and profession specific support services here.

Contents

1. Purpose

- **Additional information is added to the National Register if a National Board believes that sexual misconduct was a basis for a tribunal finding of professional misconduct**
- **This improves transparency for the public**
- **This Guidance is used by Boards in determining whether a basis for a tribunal's finding of professional misconduct was that the practitioner engaged in sexual misconduct**

1.1 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.

1.2 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.

1.3 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.

1.4 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 a National Board is satisfied that a basis for a finding of professional misconduct by a tribunal was that a practitioner engaged in sexual misconduct.[1]

1.5 This measure ensures that such findings are transparently recorded and remain accessible to the public permanently, unless removed as required under the National Law. 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.

1.6 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. The context of the behaviour is important in determining whether it amounts to sexual misconduct and a definition may not be able to properly address that.

1.7 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.

1.8 The Guidance defines the scope, impact, and serious consequences of such misconduct and reinforces the commitment of the National Boards to protect public health and safety. National Boards will base their decisions solely on the tribunal's published decision and reasons.

1.9 Importantly, in determining whether the conduct is sexual misconduct, National Boards will consider 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.

1.10 This means that when determining whether a basis for a finding of professional misconduct was that the practitioner engaged in sexual misconduct, National Boards will take into account whether such a determination will assist to protect the public and maintain confidence in the profession.

1.11 This Guidance will be applied by National Boards when deciding whether a basis for a tribunal finding of professional misconduct was that the practitioner engaged in sexual misconduct. That is, this Guidance will be used after the disciplinary process has been completed and a practitioner has been found by a tribunal to have engaged in professional misconduct. It is not intended to provide information as to when a National Board may decide whether to commence an investigation or in deciding what, if any, disciplinary steps may be taken at the conclusion of an investigation.

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1 The law in NSW is different. In relation to decisions by the NSW Civil and Administration Tribunal, the requirement in section 225A of the National Law to publish additional information applies if the tribunal decided that the practitioner:

- behaved in a way that constitutes professional misconduct (specifically as defined in the NSW National Law);
- has been convicted or the subject of a finding for an offence which renders the practitioner unfit in the public interest to practise the profession; or
- is not a suitable person for registration in the profession

and that a basis for the decision was that the practitioner engaged in sexual misconduct.

Throughout this Guidance, a reference to 'professional misconduct' includes a reference to each of the possible findings by NSWCAT mentioned above, unless the context requires otherwise.

1.12 Review period. The guidance will be reviewed no later than two years after it takes effect. Ahpra and the National Boards may review the guidance earlier if needed. The review will take into account the outcome of any judicial challenge, feedback from affected practitioners and stakeholders and the experience of National Boards and Ahpra.

2. Who does this guidance apply to?

- **All registered health professions regulated under the National Registration and Accreditation Scheme**
- **Nationally – including in Queensland and New South Wales (co-regulatory jurisdictions)**
- **To tribunal decisions about practitioner professional misconduct dating back to 1 July 2010**
- **New South Wales tribunal decisions will be considered using the categories of conduct referred to in the National Law as applied in that state**

2.1 This Guidance applies to all health professions regulated by Ahpra and the National Boards. It applies in Queensland and New South Wales despite the co-regulatory arrangements in those jurisdictions but subject to the specific legislative provisions applying in those jurisdictions.

2.2 In particular, decisions by the NSW Civil and Administrative Tribunal in relation to practitioners will be considered in light of the different categories of conduct referred to in the National Law as it applies in NSW.

2.3 The amendments to the National Law apply retrospectively. This means that they apply in respect of tribunal decisions made after the date a health profession was first regulated under the National Registration and Accreditation Scheme:

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

3. The National Boards' task

- **National Board must be satisfied that a tribunal has found professional misconduct and that a basis for that finding was that the practitioner engaged in sexual misconduct**
- **National Board may only rely on a necessary inference if the basis for a tribunal's decision cannot be understood on the face of the decision**

3.1 The requirement to record additional information on the National Register in respect of a practitioner arises if a National Board is satisfied that, in respect of a practitioner:

a. a responsible tribunal decided that the practitioner behaved in a way that constitutes professional misconduct; and
b. a basis for the tribunal's decision was that the practitioner engaged in sexual misconduct, whether occurring in connection with the practice of the practitioner's profession or not.

3.2 Accordingly, a National Board will take the following steps in relation to each tribunal decision:

a. Determine whether a tribunal has decided that the practitioner has engaged in professional misconduct.

   This step is generally straightforward as it will be clearly stated on the face of the tribunal's decision.

b. Determine whether a basis for the tribunal's decision was that the practitioner engaged in sexual misconduct.

   For the requirement to arise, sexual misconduct does not need to be the sole or main basis for the finding of professional misconduct. Nor does a finding of sexual misconduct need to be expressly made by the tribunal.

3.3 In satisfying itself as to whether sexual misconduct was a basis for the tribunal's finding of professional misconduct, there are essentially two steps for a National Board.

a. Firstly, identifying whether any conduct is sexual misconduct by reference to express findings by the tribunal or otherwise by applying the principles set out below.

b. Secondly, determining whether particular conduct formed a basis for the tribunal's finding of professional misconduct. A National Board may make this decision on the basis of an express finding by the tribunal, or, in very limited circumstances where this cannot be determined solely on the face of the tribunal's decision without drawing an inference, by drawing a necessary inference.

3.4 In the absence of an express finding by the tribunal, a National Board may determine that sexual misconduct was a basis for the finding of professional misconduct by relying upon a necessary inference. Such an inference will not be 'necessary' if the basis for the tribunal's decision can be understood on the face of the decision (and reasons) without any inference being drawn.

3.5 This approach ensures that any doubt favours the practitioner. If the tribunal's decision and reasons for decision can be understood without inferring that sexual misconduct by the practitioner was a basis for the tribunal's professional misconduct decision, the 'necessary' test is not met.

3.6 This decision making process is shown in the following examples:

Example 1 – Conviction of sexual assault

A tribunal finds that a practitioner engaged in professional misconduct on the basis of a single allegation relating to a criminal conviction of sexual assault. In its reasons, the tribunal refers to the conduct as amounting to sexual misconduct.

The National Board will be satisfied, without the need for any inference, that a basis for the tribunal's decision was that the practitioner engaged in sexual misconduct. The Board will therefore record additional information on the National Register

Example 2 – One allegation of inappropriate touching

A tribunal finds that a practitioner touched a patient in the genital area without clinical justification and failed to maintain proper records of the consultation. It found that the practitioner's behaviour amounted to professional misconduct. The tribunal did not expressly refer to the conduct as being sexual misconduct.

In finding professional misconduct, the tribunal did not refer to each allegation and simply made a global finding of professional misconduct.

Depending on the context and circumstances of the matter (solely as set out in the tribunal's decision and reasons) the National Board may consider that the conduct was sexual misconduct. The National Board could also be satisfied that a basis for the tribunal's finding of professional misconduct was the practitioner's conduct of touching the patient in the genital area by drawing a necessary inference.

Example 3 – One allegation of hugging a patient

A tribunal considers a matter involving several allegations relating to inappropriate prescribing of schedule 8 medications over an extended period. One additional allegation involves the practitioner hugging a patient at the conclusion of a consultation. The tribunal makes a global finding of professional misconduct. In so doing, the tribunal finds the fact of the hugging proven but does not expressly refer to this in the finding of professional misconduct.

The National Board could be satisfied that the finding of hugging a patient was one (but not the sole or main) basis for the decision of professional misconduct. However, subject to the context and circumstances set out in the tribunal's decision, it is unlikely that the Board could be satisfied that the hugging was sexual misconduct. An inference of sexual misconduct being a basis for the professional misconduct finding is unlikely to be 'necessary' in this situation.

4. What is sexual misconduct?

- **Sexual misconduct is a broad concept that is not defined under the National Law**
- **All sexual misconduct is serious**

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

4.2 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.

4.3 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.

4.4 All sexual misconduct is serious. This Guidance does not use the expression 'serious sexual misconduct' or attempt to categorise types of sexual misconduct by reference to seriousness. To do so would suggest that that some forms of sexual misconduct are not serious.

4.5 Sexual misconduct may occur:

- even if other parties involved consent to the conduct;
- through telehealth or other forms of remote health care;
- even if there is no criminal prosecution for the conduct.

5. Categories of sexual misconduct and examples

There are many types of sexual misconduct which are best understood by reference to examples

5.1 Sexual misconduct may include, but is not limited to the types of sexual misconduct referenced in the **table below:**

Type of sexual misconduct	Examples
a. Violation by a practitioner of a professional boundary between the practitioner and a person under the practitioner's care that could be considered sexual	• 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; • Flirting, whether or not the flirting is overtly or expressly sexual, 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.
b. Conduct by a practitioner – in the practice of the practitioner's profession – that relates to a person other than their patient or client	• 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, impropriety or hostility; • Engaging in intimate and/or sexual relations with colleagues where workplace hierarchies or supervisory roles undermine genuine consent or create a coercive environment; • Making sexually suggestive comments, jokes, or innuendos, particularly where such behaviour 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.

Type of sexual misconduct	Examples
c. Conduct giving rise to a criminal conviction or finding of guilt – whether committed in connection with the practice of the practitioner's profession or not	• Sexual assault, rape, stalking (involving a sexual component) or sexual 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, sexually explicit deepfake images or videos and unlawful pornographic material.

5.2 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 but can still cause harm and violate ethical standards. These examples highlight the importance of context, power dynamics, and the need for clear professional guidelines to protect both patients/clients and practitioners.

6. Other relevant factors

Context and behavioural factors must be considered to decide if conduct is sexual misconduct

6.1 If a tribunal has not made an express finding in relation to sexual misconduct and the Board is required to draw a necessary inference, the Board will take into account a range of contextual and behavioural factors, including but not limited to those in the table below, together with the categories and examples in section 5.

6.2 Factor	Explanation
a. The nature and location of any physical contact	The context in which physical contact occurs, especially involving intimate areas (including genital area, anal area or breasts), 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.
b. 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 and accompanied by properly informed consent. 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.
c. 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 and considered in the context of the matter.
d. 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.
e. 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.
f. Power imbalance	The inherent authority of a practitioner over a patient/client or subordinate compromises the ability to give genuine consent. Any exploitation of this imbalance, whether subtle or overt, may be an indication of sexual misconduct.
g. 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.
h. 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.
i. 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.

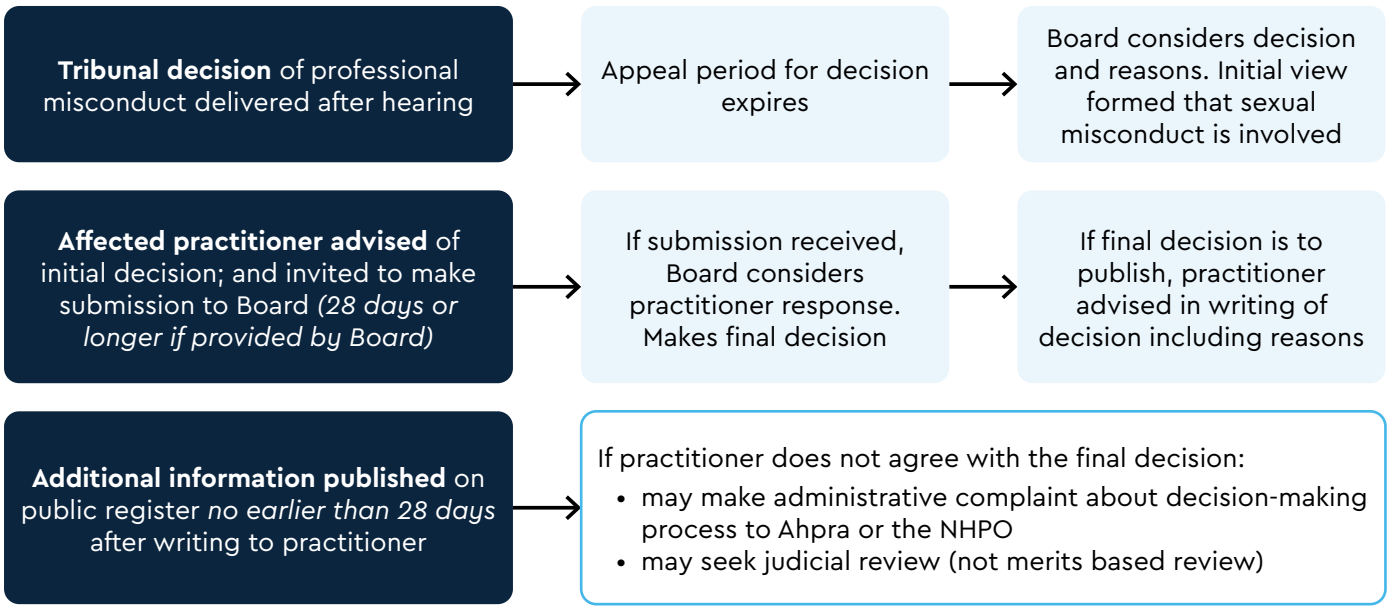
6.3 Each case is reviewed individually by the Board, with regard to all of the relevant circumstances, including cultural sensitivities and the perspective of those affected by the conduct, insofar as such matters are available in a tribunal's decision and reasons.

6.4 Cultural safety for Aboriginal and/or Torres Strait Islander Peoples is embedded throughout all functions of the National Scheme. This includes Boards' determining whether sexual misconduct is involved, based on a tribunal's findings and reasons, when the matter involves Aboriginal and/or Torres Strait Islander Peoples. Decision-makers will give full consideration to the cultural safety aspects of the tribunal's decision and reasoning. Indigenous decision-makers will be involved in these determinations.

7. Process for decision making

The process for making decisions regarding sexual misconduct and publishing information is procedurally fair

7.1 Decision-making summary diagram below:



7.2 The process for deciding whether a basis for a tribunal finding of professional misconduct was that the practitioner engaged in sexual misconduct involves the following:

a. The relevant National Board (or a delegated decision maker) will consider the tribunal's decision and reasons and form an initial view as to whether sexual misconduct may be a basis for the Tribunal's decision of professional misconduct. This will occur after the expiration of any relevant appeal period in respect of the decision;

b. If the National Board (or delegated decision maker) forms such a view, the affected practitioner will be advised in writing of the Board's proposed decision and reasons for that decision (and what information is proposed to be published) and invited to make a submission within 28 days (or such longer period provided by the Board) in respect of the proposed decision, including by referring to any relevant court or tribunal order and the exceptions in section 226 of the National Law. The practitioner will be provided with information about how to seek support should they consider that necessary;

c. Should a submission be received, the National Board (or delegated decision maker) will consider the proposed decision and the submission and make a final decision as to whether a basis for the tribunal finding of professional misconduct was that the practitioner engaged in sexual misconduct and, if so, whether any relevant exceptions to publication apply. The Board will endeavour to make the decision within 28 days of receiving any submission;

d. If the National Board decides to publish additional information it will determine what material will be published. The affected practitioner will be advised in writing of the Board's decision, along with its reasons;

e. Additional information will then be added to the public register no earlier than 28 days after advising the practitioner.

7.3 The process set out above is designed to be procedurally fair to affected practitioners. While it will be applied generally, modifications may be made to process in specific cases where it is necessary to do so to ensure fairness for the practitioner, in circumstances of urgency or in other exceptional cases.

7.4 The National Board will take all reasonable steps to contact the practitioner during the above process by using the contact details recorded by Ahpra.

7.5 The decision of a Board is not subject to a merits review but is subject to judicial review.

7.6 An affected practitioner who is dissatisfied with the decision making process may also make a complaint through Ahpra's administrative complaints system or to the National Health Practitioner Ombudsman.

7.7 A detailed process map for publishing the additional information is provided at **Appendix 1**. For information about how Ahpra and the National Boards manage notifications about the health, performance and conduct of practitioners – including bringing serious matters to tribunal – refer to the published Regulatory Guide.

8. What will be published?

The National Law determines what information is added to the National Register

8.1 If a National Board finds that a basis for a finding of professional misconduct was that the practitioner engaged in sexual misconduct, section 225B of the National Law requires the following to be published on the public register:

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

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

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

8.3 Information subject to non-disclosure orders (such as names of patients, clients, witnesses etc) will not be published.

9. Exceptions to publication

National Boards will not include additional information if an exception to publication under the National Law applies

9.1 Information will not be published to the National Register (even if the National Board decides that a basis for the tribunal's decision of professional misconduct was sexual misconduct) in the following situations. The Board will consider whether these possible exceptions apply in every case, regardless of whether a practitioner raises the exceptions in their submission in response to a Board's proposal to make a finding.

Exception	Explanation
a. Stay, overturn or modification of decision.	Where a decision by a tribunal of professional misconduct is appealed and the result is that the decision is stayed, overturned or modified to such an extent that the requirement to publish additional information no longer applies.
b. Contravention of an order of a court or tribunal.	If publishing the additional information would contravene the order of a court or tribunal, the information may not be recorded at all or may be recorded in a limited fashion to ensure the order is not contravened.
c. Impairment of practitioner	A condition imposed or an undertaking accepted because a practitioner has an impairment will not be recorded if it is necessary to protect the practitioner's privacy and there is no overriding public interest for the conditions or the details of the undertaking to be recorded (section 226(1) of the National Law).
d. Serious risk to health or safety of practitioner, or the practitioner's family, or associate	Additional information will not be recorded if the practitioner asks the Board not to publish the information and the Board believes that the inclusion of the information would present a serious risk to the health or safety of the practitioner or the practitioner's family or associate (section 226(2) of the National Law).

10. National Register

10.1 If a National Board is satisfied that a basis for a Tribunal finding of professional misconduct was that the practitioner engaged in sexual misconduct, it must include the additional information on the National Register or Specialists Register.

10.2 The National Register is available to the public on Ahpra's website. It incorporates the National Register of Health Practitioners and the List of Cancelled Health Practitioners.

11. References

11.1 This Guidance has been developed by reference to:

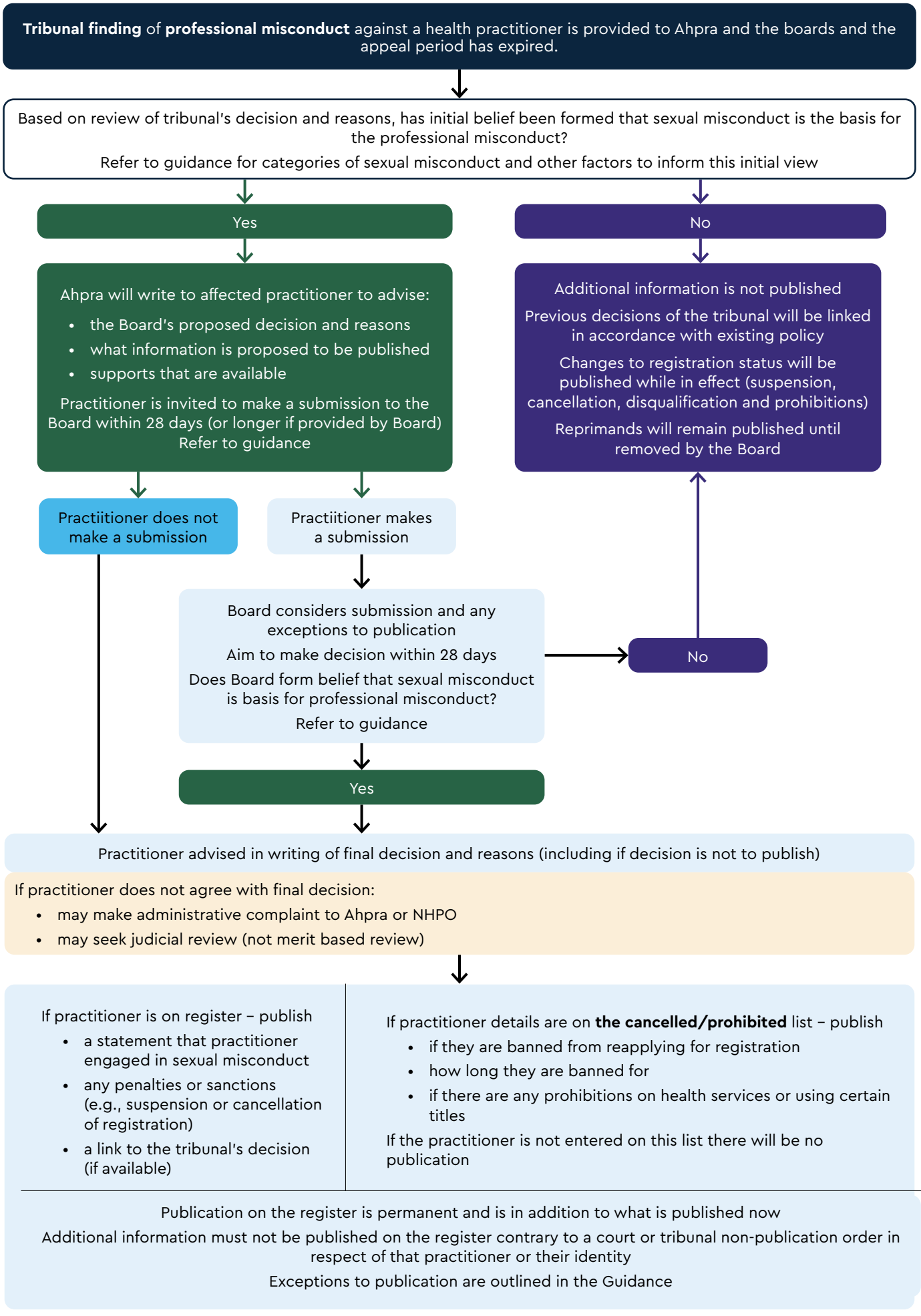
a. *Health Practitioner Regulation National Law* as in force in each state and territory

b. *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024* Erratum to the Explanatory Notes

c. Medical Board of Australia's Guidelines: *Sexual boundaries in the doctor-patient relationship*

d. *Independent review of the use of chaperones to protect patients in Australia* and follow-up report *Three years on: Changes in regulatory practice since Independent review of the use of chaperones to protect patients in Australia.*

Appendix 1 – Process map for publishing the additional information



Appendix 2 – Glossary

Ahpra	Australian Health Practitioner Regulation Agency
Co-regulatory jurisdiction	Under the National Law, New South Wales and Queensland are co-regulatory jurisdictions only for notifications (complaints) about practitioners in those states. In these states, concerns are raised directly with the NSW Health Care Complaints Commission and the Queensland Office of the Health Ombudsman
Ministerial Council	Health Ministers from each state and territory and the Commonwealth
National Boards	15 National Boards established for the 16 registered health professions
NHPO	National Health Practitioner Ombudsman
National Law	Health Practitioner Regulation National Law, as in force in each state and territory
Professional misconduct	is defined in the National Law as meaning: (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 (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 (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. Note that section 139E of the *Health Practitioner Regulation National Law* applied in NSW defines **professional misconduct** for registered health practitioners. It states that professional misconduct is either a single instance of unsatisfactory professional conduct that is serious enough to justify suspending or cancelling registration, or multiple instances of unsatisfactory professional conduct that, when combined, meet this serious threshold. Direct link to NSW National Law s.139E is accessible here. The requirement in section 225A of the National Law in NSW to publish additional information may arise if the NSW tribunal makes a decision that (i) the practitioner behaved in a way that constitutes professional misconduct; or (ii) the practitioner has been convicted of or made the subject of a criminal finding for an offence, either in or outside this jurisdiction, and the circumstances of the offence render the practitioner unfit in the public interest to practise the practitioner's profession; or (iii) the practitioner is not a suitable person for registration in the practitioner's profession;.
Sexual misconduct	Refer to parts 4 to 6 of this Guidance
Tribunal	A state or territory civil and administrative tribunal that hears the most serious matters (and appeals) involving registered health practitioners under the National Law. For example, in Victoria it is the Victorian Civil and Administrative Tribunal (VCAT), while in Queensland it is the Queensland Civil and Administrative Tribunal (QCAT).