

## Independent Governance Review of the Health Services Act 2016

Submission from Richard Smirk, Acting State Manager, Australian Health Practitioner Regulation Agency (Ahpra)

20 May 2022

### Submission

#### Overview

- The current provisions contained within the *Health Practitioner Regulation National Law (Western Australia)* (National Law) adequately recognises and covers the ability to report unsatisfactory professional performance.
- It may be considered that under Section 146 *Further Reporting and Notification* requirements of the Health Services Act unnecessarily duplicate this action by providing a requirement for any staff member employed under the auspices of the Health Services Act to report unsatisfactory professional performance under the *Health Practitioner Regulation National Law (Western Australia)*.
- The consideration or reporting requirements for unprofessional conduct are not detailed in the Health Services Act
- Definitions contained within the Health Services Act to be reviewed with the potential for harmonisation with the Health Practitioner Regulation National Law (National Law )

#### Detailed Submission

Section 146 of the Health Services Act 2016 currently compels a staff member's response authority to report any conduct of the staff member that is suspected of constituting **professional misconduct** or **unsatisfactory professional performance** under the *Health Practitioner Regulation National Law (Western Australia)* (National Law).

Under the National Law **Unsatisfactory professional performance**, of a registered health practitioner, means the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.

It is considered that provisions currently contained within the National Law adequately recognises and covers the management of unsatisfactory professional performance. It may be considered that under Section 146 of Health Services Act 2016, *Further Reporting and Notification*, the absolute requirement to report unprofessional conduct is an unnecessary duplication.

It is recognised that reporting of **professional misconduct** remains an essential feature of the Act, however, under S146, it may be considered an obligation to report any registered health practitioners for conduct related *unsatisfactory professional performance* may be unnecessary. Situations where *unsatisfactory professional performance* has been managed appropriately within the health services entity with risk identified and mitigated may not necessarily require management outside of the health service entity. The ability to report where risk has been identified but cannot be adequately managed, for example, if a practitioner moved outside the remit of the Health Services Act and cannot be managed, say by resigning, may be the exception that requires reporting based on an individual risk assessment.

The obligation for reporting of *unsatisfactory professional performance*, except where not appropriately managed, may give rise to unnecessary duplication of investigation and management resources across both the Department and Ahpra, without any commensurate additional protection and safety to the public.

It further appears there is NO obligation under S146 to report **unprofessional conduct** which is defined separately in the National Law.

The National Law defines **unprofessional conduct** as;

**unprofessional conduct**, of a registered health practitioner, means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and includes —

(a) a contravention by the practitioner of this Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and

(b) a contravention by the practitioner of —

(i) a condition to which the practitioner's registration was subject; or

(ii) an undertaking given by the practitioner to the National Board that registers the practitioner; and

(c) the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession; and

(d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's well-being; and

(e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care; and

(f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider; and

(g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the practitioner; and

(h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the practitioner has a pecuniary interest in giving that referral or recommendation, unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation.

It is noted that reporting of elements of **unprofessional conduct** are included under additional provisions of S146 (2) however, it does not specifically refer to or define unprofessional conduct.

It may be considered prudent to define and specify **unprofessional conduct** with the Health Services Act and under S146 as a requirement to compel a staff member's responsible authority to report under the *Health Practitioner Regulation National Law (Western Australia)* (National Law) rather than unsatisfactory professional performance in line with the recommendations above.

Further it may be an appropriate point to review or include the definitions of unsatisfactory professional performance, unprofessional conduct, and professional misconduct in the Health Services Act and consider harmonisation by aligning with the definitions already contained within the *Health Practitioner Regulation National Law (Western Australia)* (National Law).

It appears NSW legislation may have similar provisions; however, no other jurisdiction has these provisions in their health legislation. Ahpra would welcome the opportunity to discuss and explore optimising the alignment of the Health Services Act, with the WA Department of Health.

Respectfully submitted

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