



# Reporting of Criminal Conduct and Professional Misconduct Policy

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## 1. Purpose

The Reporting of Criminal Conduct and Professional Misconduct Policy (Policy) is part of the Employment Policy Framework issued by the Department CEO pursuant to section 26 of the *Health Services Act 2016 (Act)*.

Staff Members in accordance with section 145 of the Act have a statutory obligation to report certain Criminal Conduct or Professional Misconduct to their Responsible Authority.

The Responsible Authority, in accordance with section 146 of the Act, must report any staff conduct which constitutes, or may constitute Professional Misconduct or Unsatisfactory Professional Performance under the *Health Practitioner Regulation National Law (Western Australia) Act 2010* to the professional body and the Department CEO.

The Responsible Authority, in accordance with section 146 of the Act, must, on becoming aware that a Staff Member has been charged, convicted or found guilty of certain Criminal Conduct, report it to the Department CEO.

Criminal Conduct has the same meaning as Serious Offence and the terms are used interchangeably in this Policy.

## 2. Applicability

This mandatory Policy applies to all Staff Members employed by a Health Service Provider (HSP) established under the Act which at the time of publication includes:

- Child and Adolescent Health Service;
- East Metropolitan Health Service;
- Health Support Services;
- North Metropolitan Health Service;
- South Metropolitan Health Service;
- WA Country Health Service; and
- Quadriplegic Centre.

## 3. Policy Requirements

- 3.1 Professional Misconduct for the purposes of this Policy means a Misconduct Finding of Professional Misconduct, Unprofessional Conduct and/or Unsatisfactory Professional Performance made against a registered health professional, as defined under section 5 of the *Health Practitioner Regulation National Law (WA) Act 2010 (National Law)*.

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- 3.2 A Staff Member must, within 7 days of being charged, convicted or found guilty of Criminal Conduct, report in writing to their Responsible Authority of the conviction or charge being laid.
  - 3.3 A Staff Member must, within 7 days of receiving notice of a Misconduct Finding against them under the National Law, report and provide a copy of the Misconduct Finding to their Responsible Authority.
  - 3.4 The Responsible Authority is required to report on reasonable grounds a suspicion that a Staff Member's conduct constitutes, or may constitute Professional Misconduct or Unsatisfactory Professional Performance under the National Law.
  - 3.5 The Responsible Authority must report instances of Criminal Conduct to the Department CEO.

### 3.6 Roles and Responsibilities

#### 3.6.1 Employees and Staff Members

All Staff Members of a HSP are required to report in writing to the Chief Executive, within 7 days of being notified of:

- (a) being charged, convicted or found guilty of a Serious Offence, within the meaning of section 80A of the *Public Sector Management Act 1994*; and/or
- (b) a finding of Professional Misconduct made against them under the National Law.

#### 3.6.2 Responsible Authority

The Responsible Authority must report any conduct of a Staff Member that the Responsible Authority suspects on reasonable grounds constitutes, or may constitute Professional Misconduct or Unsatisfactory Professional Performance under the National Law in writing to:

- (a) the professional board or authority that deals with the registration of the Staff Member as a health practitioner; and
- (b) the Department CEO.

Where a Responsible Authority has been made aware that a Staff Member has been charged, convicted or found guilty of a Serious Offence, the Responsible Authority is required to report this in writing to the Department CEO.

Where a Staff Member is engaged under a contract for services and is charged with having committed a Serious Offence or their registration as a registered health practitioner has been suspended or made conditional under the National Law, the Staff Member's ongoing engagement will be reviewed by the Responsible Authority under the terms of the Staff Member's contract.

#### 3.6.3 Department CEO

The Department CEO may notify another HSP, or any other person or body of a report received, for the protection of patients.

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In relation to Criminal Conduct or Professional Misconduct of the Chief Executive of a HSP, the Department CEO's roles and responsibilities are those of an Employing Authority.

#### 3.6.4 Employing Authority

The Employing Authority may suspend an Employee on full pay, partial pay or no pay if charged with having committed a Serious Offence.

The Employing Authority may initiate Disciplinary Action and/or Improvement Action if an Employee is convicted or found guilty of a Serious Offence.

The Employing Authority may suspend an Employee from duty on full pay, partial pay or no pay if:

- (a) the registration of the Employee as a registered health practitioner is suspended under the National Law; or
- (b) conditions are imposed on the registration of an Employee as a registered health practitioner under the National Law that, in the opinion of the Employing Authority:
  - (i) are inconsistent with the inherent requirements of the terms of employment of the Employee; or
  - (ii) the HSP is unable to accommodate for operational reasons.

The Employing Authority may initiate Disciplinary Action and/or Improvement Action in addition to, or separate from suspension from duty, provided the Employee's rights of appeal under the National Law have been observed.

Disciplinary Action and/or Improvement Action cannot be initiated by an Employing Authority on the grounds that the Employee's registration has been suspended or made conditional until the Employee has exhausted all rights of appeal under the National Law or those rights of appeal have lapsed.

Disciplinary Action and/or Improvement Action cannot be initiated on the grounds that the Employee's registration has been suspended or made conditional by an Employing Authority if, under the National Law, the Employee successfully appeals the action taken.

### 3.7 Other Responsibilities

#### 3.7.1 Confidentiality

It is in the interests of all parties for confidentiality to be observed throughout the reporting of Criminal Conduct and Professional Misconduct process. A breach of confidentiality may result in Disciplinary Action and/or Improvement Action in accordance with the WA Health Discipline Policy.

#### 3.7.2 Serious/Gross Misconduct

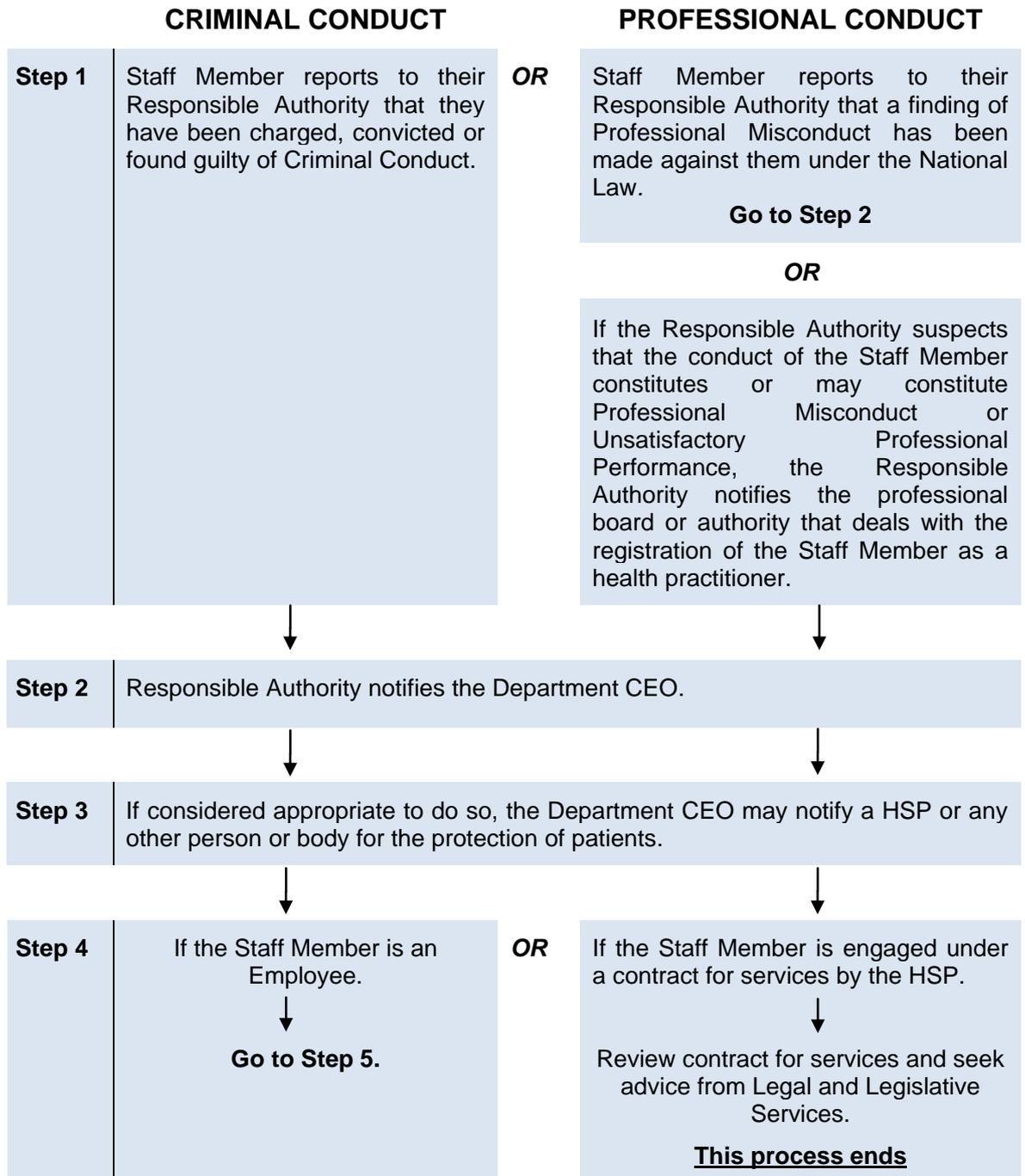
This Policy does not limit the right to summarily dismiss an Employee for serious/gross misconduct.

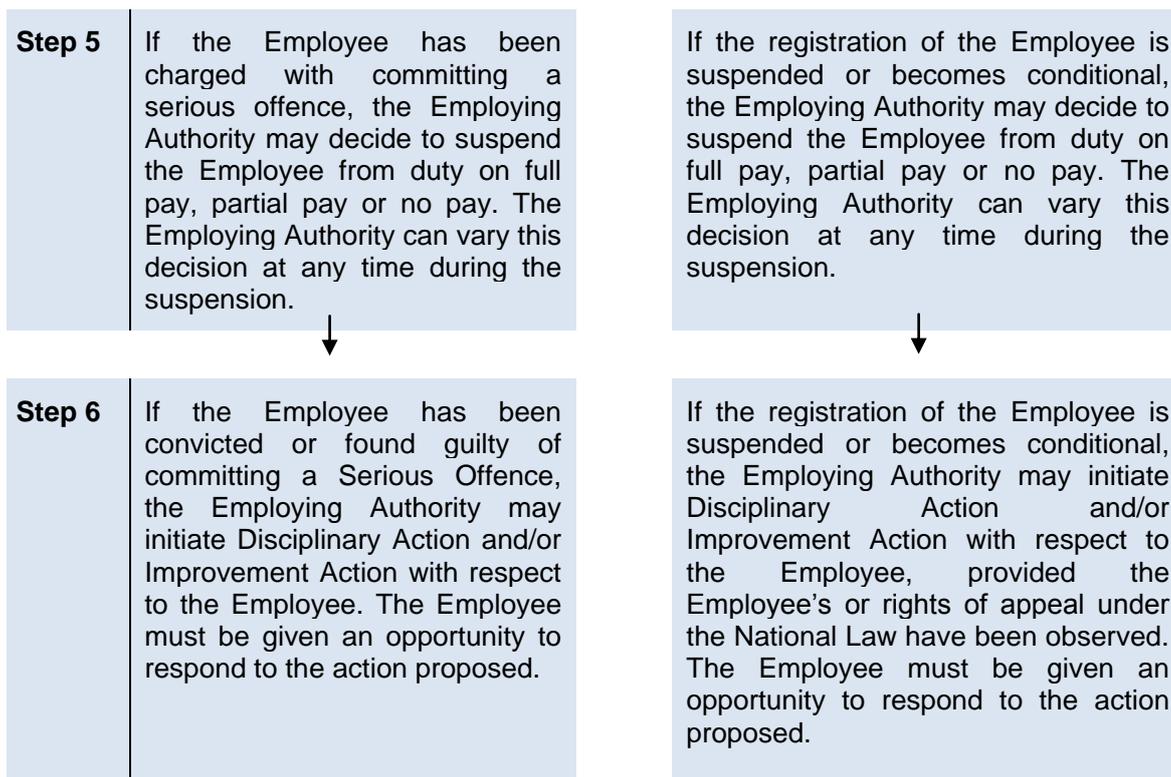
### 3.7.3 Record Keeping

A record of documents relating to each report of Criminal Conduct and/or Professional Misconduct and any subsequent action must be maintained

### 3.8 The Criminal Conduct and Professional Misconduct Reporting Process

The following process sets out the steps required when reporting and dealing with Criminal Conduct and Professional Misconduct:





#### 4. Compliance monitoring and evaluation

A Staff Member is responsible for ensuring they are compliant with this Policy. Failure to comply with this Policy may result in Disciplinary Action and/or Improvement Action in accordance with the WA Health Discipline Policy.

#### 5. Related documents

The following documents inform the implementation of this mandatory policy:

- Notifying Misconduct Policy
- WA Health Code of Conduct
- WA Health Discipline Policy
- WA Health Guidelines for Protecting Children 2015

Relevant legislation:

- Corruption, Crime and Misconduct Act 2003
- Criminal Code
- Equal Opportunity Act 1984
- Freedom of Information Act 1992
- Health Services Act 2016
- Health Practitioner Regulation National Law (WA) Act 2010
- Industrial Relations Act 1979
- Public Interest Disclosure Act 2003

- Public Sector Management Act 1994 and subsidiary legislation (Regulations)
- State Records Act 2000

Copies of the current versions of the above (and other) legislation can be obtained online from the State Law Publisher: [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

## 6. Supporting information

The following non-mandatory documents support the implementation of this mandatory policy:

- WA Health Ethical Standards: Investigation Protocols
- WA Public Sector Code of Ethics, issued through the Commissioner's Instruction No. 7 – Code of Ethics,
- The Commissioner's instructions No.3, Discipline – General
- The Commissioner's instructions No.4, Discipline – Former Employees
- AHPRA Guidelines for mandatory notifications

## 7. Definitions

<b>Breach of discipline</b>	Pursuant to section 161 of the Act, an Employee commits a breach of discipline if the Employee: (a) disobeys or disregards a lawful order; or (b) contravenes – (i) any provision of the Act applicable to that employee; or (ii) any public sector standard or code of ethics; or (iii) or a policy framework; or (c) commits an act of Professional Misconduct; or (d) is negligent or careless in the performance of the employee's functions; or (e) commits an act of victimisation within the meaning of the <i>Public Interest Disclosure Act 2003</i> section 15.
<b>Criminal Conduct</b>	Where a Staff Member has been charged with having committed, or is convicted or found guilty of a Serious Offence.
<b>Disciplinary Action</b>	As defined by section 6 of the Act means any one or more of the following: (a) a reprimand; (b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made; (c) transferring the employee to another health service provider with the consent of the employing authority of that health

	<p>service provider;</p> <p>(d) if the employee is not a chief executive, transferring the employee to another office in the health service provider in which the employee is employed;</p> <p>(e) reduction in the monetary remuneration of the employee;</p> <p>(f) reduction in the level of classification of the employee;</p> <p>(g) alteration of the employee's scope of practice or duties, or both; or</p> <p>(h) dismissal.</p>
<b>Employee</b>	<p>Pursuant to section 6 of the Act means a person employed in a health service provider (HSP) and includes:</p> <p>(a) the Chief Executive of the HSP;</p> <p>(b) a health executive employed in the HSP;</p> <p>(c) a person employed in the HSP; or</p> <p>(d) a person seconded to the HSP.</p>
<b>Employing Authority</b>	<p>Pursuant to section 103 of the Act means:</p> <p>(a) in relation to a Chief Executive, the Employing Authority is the Department CEO;</p> <p>(b) in relation to a Health Executive employed in a HSP, the Employing Authority is the Chief Executive or the Board (whichever governs the HSP); and</p> <p>(c) in relation to an Employee in a HSP, the Employing Authority is the Chief Executive or the Board (whichever has the power to employ or engage Employees in the HSP).</p>
<b>Improvement Action</b>	<p>As defined by section 6 of the Act means any one or more of the following:</p> <p>(a) counselling;</p> <p>(b) training and development;</p> <p>(c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory; and/or</p> <p>(d) any other action of a similar nature.</p>
<b>Misconduct Finding</b>	<p>For the purposes of section 145(2) of the Act means a finding made against a person under the National Law and includes a finding of the following:</p> <ul style="list-style-type: none"> <li>• Unsatisfactory Professional Performance;</li> <li>• Unprofessional Conduct; or</li> </ul>

	<ul style="list-style-type: none"> <li>Professional Misconduct.</li> </ul>
<b>Professional Misconduct</b>	<p>For the purposes of section 5 of the National Law means misconduct which includes:</p> <p>(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; and</p> <p>(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; and</p> <p>(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.</p>
<b>Responsible Authority</b>	<p>Pursuant to section 144 of the Act means the following:</p> <ul style="list-style-type: none"> <li>In relation to a Chief Executive the Responsible Authority is the Department CEO.</li> <li>In relation to a Staff Member in a HSP (other than the Chief Executive) the Responsible Authority is the Chief Executive of the HSP.</li> </ul>
<b>Serious Offence</b>	<p>Has the same meaning as section 80A of the <i>Public Sector Management Act 1994</i>:</p> <p><i>Serious Offence</i> means —</p> <p>(a) an indictable offence against a law of the State (whether or not the offence is or may be dealt with summarily), another State or a Territory of the Commonwealth or the Commonwealth; or</p> <p>(b) an offence against the law of another State or a Territory of the Commonwealth that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or</p> <p>(c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or</p> <p>(d) an offence, or an offence of a class, prescribed under section 108. (see PSMA Regulations).</p>
<b>Staff Member</b>	<p>In relation to a HSP and pursuant to section 6 of the Act means:</p> <p>(a) an Employee in the HSP; and/or</p>

	(b) a person engaged under a contract for services by the HSP.
<b>Unprofessional Conduct</b>	<p>For the purposes of section 5 of the National Law 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:</p> <ul style="list-style-type: none"> <li>(a) a contravention by the practitioner of this National Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and</li> <li>(b) a contravention by the practitioner of <ul style="list-style-type: none"> <li>(i) a condition to which the practitioner's registration was subject; or</li> <li>(ii) an undertaking given by the practitioner to the National Board that registers the practitioner; and</li> </ul> </li> <li>(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</li> <li>(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</li> <li>(e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care; and</li> <li>(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</li> <li>(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</li> <li>(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.</li> </ul>
<b>Unsatisfactory Professional Performance</b>	<p>For the purposes of section 5 of the National Law 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.</p>

## 8. Policy owner

Executive Director, System Governance and Assurance Directorate  
Governance and System Support Division

## 9. Review

This mandatory policy will be reviewed as required to ensure relevance and recency. At a minimum it will be reviewed within 2 years after first issue and at least every 3 years thereafter.

Version	Effective from	Effective to	Amendment(s)
MP0043/16	1 January 2016	31 December 2022	Original version

The review table indicates previous versions of the mandatory document and any significant changes.

## 10. Approval

This mandatory policy has been approved and issued by the Director General of the Department of Health.

Approval by	Dr David Russell-Weisz, Director General, Department of Health
Approval date	23 December 2016
Published date	29 December 2016
RMR#	D-AA-16/90764



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