



Notifiable and Reportable Conduct Guide

Contents

1. Introduction	2
2. Process for Notifying or Reporting Conduct.....	3
3. Process for Notifying or Reporting Conduct – Flow Chart.....	4
4. Recording Matters in the Case Management System (CMS)	5
5. Pre-Employment Integrity Check (PEIC).....	5
6. Aggregated Report.....	6
7. Record Keeping	6
8. Confidentiality	6
9. Process for Notifying or Reporting Conduct – Explanatory Notes.....	6
10. Definitions	14
11. Legislative Obligations Tables	21
Duty of the Department Chief Executive Officer (CEO) as a Responsible Authority, Employing Authority and Principal Officer of a Notifying Authority	22
Duty of the Chief Executive (CE) as a Responsible Authority and Principal Officer of a Notifying Authority	23
Duty of the Chief Executive (CE) or the Board as an Employing Authority.....	24
Duty of a Staff Member	24

Notifiable and Reportable Conduct Guide

1. Introduction

The *Health Services Act 2016* (**HS Act**) provides that the protection of a Health Service Provider's patients must be the paramount consideration.

The protection of patients includes:

- patient safety; and
- patient confidentiality.

The *Notifiable and Reportable Conduct Policy* (**Policy**) recognises that the safety of staff and the reputation of the WA health system are enhanced by reporting and notifying conduct that compromises standards of behaviour and practice.

The HS Act and the *Corruption Crime and Misconduct Act 2003* (**CCM Act**) provide for the conduct that is considered notifiable and reportable and the thresholds to be applied when meeting these legislative obligations.

Section 34 of the HS Act provides for the main functions of a Health Service Provider, including but not limited to:

- complying with the policy frameworks and the Department Chief Executive Officer's (**CEO**) directions that apply or relate to the Health Service Provider; and
- to provide performance data, other data and any other information the Department CEO may require to the Department CEO.

The *Notifiable and Reportable Conduct Guide* (**Guide**) supports the practical application of the Policy and, in particular, the process and assessment of reported conduct.

The Guide represents suggested practice and is not binding. The Guide is not intended to be procedural instructions and is not a substitute for complying with legislation or the requirements of the Policy.

The overall management of the WA health system is the responsibility of the Department CEO. The functions of the Department CEO include, but are not limited to:

- providing strategic accountability and integrity leadership to Health Service Providers, in accordance with section 20(1)(b) of the HS Act;
- overseeing and monitoring performance and promoting improvements in the safety and quality of health services provided by Health Service Providers;
- taking remedial action when performance does not meet expected standards in accordance with section 20 (l) and (m) of the HS Act;
- notifying Health Service Providers of reports received in accordance with Parts 10 and 11 of the HS Act;
- undertaking special discipline inquiries in accordance with Part 11 of the HS Act;
- undertaking investigations, inspections and audits in accordance with Part 13 of the HS Act; and/or
- undertaking inquiries in accordance with Part 14 of the HS Act.

The Guide should be read in conjunction with the:

- *Health Services Act 2016*;
- *Corruption Crime and Misconduct Act 2003*; and
- *Health Practitioner Regulation National Law (WA) Act 2010* (**National Law**).

Notifiable and Reportable Conduct Guide

The Guide does not override the Health Service Providers obligation to comply with the CCM Act and National Law, but there is an important distinction between the legislative requirement to report to the Australian Health Practitioner Regulation Agency (**AHPRA**) and the Department CEO, which must be observed.

2. Process for Notifying or Reporting Conduct

Legislated or policy mandated obligations to report Notifiable or Reportable conduct are not diminished by mitigating circumstances and must be made as soon as the reporting or notifying threshold is met.

The following sets out the steps required when receiving information that may concern Notifiable or Reportable conduct.

The explanatory notes at Section 9 of this Guide provide further detail regarding the steps for Notifiable and Reportable Conduct.

3. Process for Notifying or Reporting Conduct – Flow Chart

Step 1	<p>Information is Received</p> <p>A complaint, incident or information in relation to a Staff Member is received by the Responsible Area (RA) of a Responsible Authority regarding conduct that may concern notifiable or reportable conduct.</p> <p>When a Responsible Authority receives information that may concern notifiable or reportable conduct by a Staff Member, the information should be assessed to determine the most appropriate course of action.</p>
Step 2	<p>Conduct an Assessment</p> <p>An assessment is conducted to ascertain whether the conduct concerns;</p> <ul style="list-style-type: none"> • suspected Professional Misconduct or Unsatisfactory Professional Performance • a charge or conviction for a Serious Offence • a Breach of Discipline • suspected Minor or Serious Misconduct.
Step 3A	<p>Notifying and Reporting Obligations</p> <p>An assessment is conducted in accordance with the HS Act and the CCM Act to determine whether the conduct requires:</p> <ul style="list-style-type: none"> • reporting to AHPRA and the Department CEO • notification to an External Agency including: <ul style="list-style-type: none"> ○ Corruption and Crime Commission (CCC) ○ Public Sector Commission (PSC) ○ Western Australia Police Force (WAPol) <p>If and/or when new information comes to light, further assessment may be required to determine if the threshold for reporting or notifying is met and alters the determination to Notify/Report.</p>
Step 3B	<p>Determining to treat the matter as disciplinary or non-disciplinary, or other resolution.</p> <p>The Responsible Authority determines how to treat the conduct, including, but not limited to:</p> <ul style="list-style-type: none"> • treat the matter as disciplinary (Refer to Discipline Policy) • treat the matter as non-disciplinary: <ul style="list-style-type: none"> ○ take Improvement Action ○ take no action ○ refer the matter to the relevant area to manage via another process (Unsatisfactory performance as it relates to the <i>Managing Unsatisfactory and Substandard Performance Policy</i> MP0041/16) • enact a power under the HS Act that deals specifically with serious charges and convictions (i.e. ss148 and 150 HS Act).
Step 3C	<p>Risk Assessment</p> <p>Step 3A and 3B should be considered concurrently. A risk assessment includes considerations relating to patient safety, organisational risk and reputation, and any other relevant factors determined by the Responsible Authority. Further options and mitigating strategies available to the Responsible Authority arising from determining a pathway, include, but are not limited to:</p> <ul style="list-style-type: none"> • suspension from duty • altering Scope of Practice or Duties • taking Discipline Action and/or Improvement Action (in accordance with s150 HS Act) • any other relevant action considered by the Responsible Authority.

Note: Reportable and Notifiable Conduct must be concluded as soon as reasonable practicable and outcomes are reported to the Department CEO as soon as reasonably practicable and within 30 days using the Closure Report Template.

4. Recording Matters in the Case Management System (CMS)

To ensure the effective management of the information entered into CMS regarding Staff Members, it is essential that the System Manager is provided with accurate, timely and relevant data for analysis and reporting, particularly for the purpose of any applicable Pre-Employment Integrity Checks.

A key function of the System Manger is to oversee, monitor and promote improvements in the safety and quality of health services provided by Health Service Providers, to monitor their performance and take remedial action when performance does not meet the expected standard.

The oversight and monitoring role relies on the System Manager receiving and validating performance data and other data, including the data required under the service agreements¹.

This Guide should be read in conjunction with the *Pre-Employment Integrity Check Policy* MP0126/19.

5. Pre-Employment Integrity Check (PEIC)

The PEIC Policy sets out the purpose of the PEIC which is to support the maintenance of professional standards, including appropriate standards of conduct and to determine a preferred applicant's eligibility for employment within the WA health system.

Information relating to Notifiable and Reportable Conduct is inherently linked to the PEIC and is the mechanism whereby information is registered into CMS for the purpose of a PEIC.

A determination will be made by the Employing Authority regarding a preferred applicant's eligibility for employment if one of the following circumstances has occurred.

The preferred applicant:

- was dismissed previously by the WA health system for:
 - a Breach of Discipline under the HS Act;
 - a Breach of Discipline or Misconduct prior to the proclamation of the HS Act;
 - a suspension or conditional registration as a registered health practitioner under the National Law;
 - a Serious Offence under the *Public Sector Management Act 1994*.
- resigned (or contract expired) from the WA health system prior to the commencement of a process or the determination of a finding regarding:
 - a Breach of Discipline, where the matter concerns a serious risk to the safety or protection of patients and/or a risk to the WA health system;
 - a charge for a Serious Offence that has not reached a court decision.
- was subject to a s146 or a s167 HS Act report, for which the Department CEO, at the time, determined the conduct or performance warranted their registration in the CMS.

The decision to flag a staff member in the CMS for the purpose of a PEIC, is made by the Department CEO, having given due consideration to the appropriateness of

¹ 'Establishing an Effective System Manager', 2017: Page 18

<https://doh-healthpoint.hdwa.health.wa.gov.au/news/Documents/Establishing%20an%20effective%20system%20manager%20discussion%20paper%20-%20FINAL%20July%202017%20v2.0.pdf>

Notifiable and Reportable Conduct Guide

notifying other Health Service Providers of a Part 10 or 11 report, for the protection of patients.

Providing to the Department CEO with the outcome of a Discipline Process or other resolution regarding a report pursuant to s146 of the HS Act, is critical to ensure the accuracy of the information in CMS about a Staff Member flagged for that purpose.

The Department CEO must give consideration to retaining or removing the flag in CMS to ensure procedural fairness for a preferred applicant in an employment selection process.

6. Aggregated Report

The aggregated report mandated by the *Notifying and Reporting Conduct Policy* provides a mechanism to support the collection of relevant aggregated information for broader analysis and assurance purposes. This is necessary for making system-wide improvements relating to:

- decision making and policy;
- systemic integrity issues of concern and risks;
- the quality, accuracy and integrity of the information in the systems;
- work practices and processes; and
- initiatives, strategies and direct solutions to address integrity risks.

7. Record Keeping

A record of documents relating to each report of notifiable or reportable conduct and any subsequent action must be maintained.

Health Service Providers must record and manage information relating to complaints and allegations using CMS and the CMS Protocols. This includes notifiable misconduct in accordance with the CCM Act.

Information relevant to the matter must be entered into CMS in a timely manner and be actively managed on an ongoing basis. Documented decisions relating to each matter should be maintained in a central file to ensure the details of the matter (including all decisions) are capable of review.

Records must be maintained in accordance with the *Western Australia State Records Act 2000* and the Health Service Provider record keeping plan, and retained for the periods in the retention and disposal schedules. Where a specific retention and disposal schedule does not exist which covers the records, the records must be retained until such time as a sentence is created and approved which would authorise their disposal.

8. Confidentiality

It is in the interests of all parties for confidentiality to be observed throughout the reporting of conduct.

A breach of confidentiality may result in Discipline Action and/or Improvement Action in accordance with the Discipline Policy.

9. Process for Notifying or Reporting Conduct – Explanatory Notes

The following process is provided as a guide, and overview of the elements, in dealing with a matter that may concern notifiable and reportable conduct.

Notifiable and Reportable Conduct Guide

Step 1	Information is Received <p>A complaint, incident or information in relation to a Staff Member is received by the Responsible Area (RA) of a Responsible Authority regarding conduct that may concern notifiable or reportable conduct.</p> <p>When a Responsible Authority receives information that may concern notifiable or reportable conduct by a Staff Member, the information should be assessed to determine the most appropriate course of action.</p>
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The information that may concern Notifiable or Reportable Conduct by a Staff Member, may be received as, but is not limited to:

- a verbal complaint (recorded in writing by the recipient)
- a written complaint
- an incident (clinical)
- consumer related feedback
- behaviour observed (recorded in writing)
- an investigation
- notification from the CCC or PSC in accordance with the CCM Act
- notification by WAPol regarding charges laid or court convictions.

Information that may concern Notifiable or Reportable Conduct by a Staff Member may be received by the RA from anyone including a Responsible Authority's employee/s, consumers or family members, clients, members of the public, suppliers or External Authorities.

Step 2	Conduct an Assessment <p>An assessment is conducted to ascertain whether the conduct concerns;</p> <ul style="list-style-type: none">• suspected Professional Misconduct or Unsatisfactory Professional Performance• a charge or conviction for a Serious Offence• a Breach of Discipline• suspected Minor or Serious Misconduct.
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To ascertain if the information meets the definition of either Notifiable or Reportable conduct, the following legislation is applicable:

- Professional Misconduct or Unsatisfactory Professional Performance, s5 of the National Law
- Serious Offence, section 80A of the *Public Sector Management Act 1994* and regulation 15 of the *Public Sector Management (General) Regulations 1994*
- Breach of Discipline, s161 of the HS Act; and
- Minor or Serious Misconduct, s4 of the CCM Act.

Figure 1

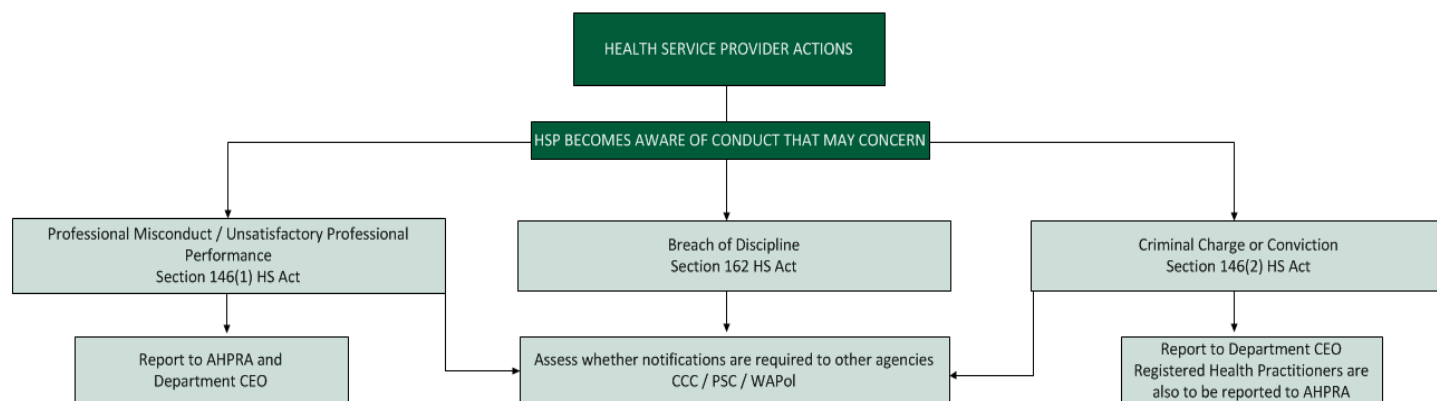


Figure 1 represents the process for notifying and reporting conduct.

Step 3A	<p>Notifying and Reporting Obligations</p> <p>An assessment is conducted in accordance with the HS Act and the CCM Act to determine whether the conduct requires:</p> <ul style="list-style-type: none"> • reporting to AHPRA and the Department CEO • notification to an External Agency including: <ul style="list-style-type: none"> ○ Corruption and Crime Commission (CCC) ○ Public Sector Commission (PSC) ○ Western Australia Police Force (WAPol) <p>If and/or when new information comes to light, further assessment may be required to determine if the threshold for reporting or notifying is met and alters the determination to Notify/Report.</p>
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The duty to notify and report Notifiable and Reportable Conduct is paramount and is required pursuant to the HS Act and CCM Act. The responsibility lies with the Health Service Provider to maintain a duty of care to patients and a corporate responsibility for an integrity-led culture.

Reporting Conduct in accordance with the HS Act

Section 146(6) HS Act

Without limiting s220 of the HS Act, in complying with s146(1) or (2) or notifying under subsection (3) a person —

- a) does not incur any civil or criminal liability; and
- b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
- c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person’s employment or to have engaged in unprofessional conduct.

Notifiable and Reportable Conduct Guide

Section 220(3) HS Act

If the collection, use or disclosure of information is authorised under s220(1) of the HS Act, —

- a) no civil or criminal liability is incurred in respect of the collection, use or disclosure; and
- b) the collection, use or disclosure is not to be regarded as —
 - i. a breach of any duty of confidentiality or secrecy imposed by law; or
 - ii. a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
 - iii. unprofessional conduct.

Reporting Conduct to AHPRA

Two thresholds for reporting matters to AHPRA exist in current legislation (the HS Act and the National Law).

Section 146 of the HS Act

The HS Act requires the Responsible Authority to reports to AHPRA if they suspect on reasonable grounds that the conduct of a Staff Member constitutes or may constitute professional misconduct or unsatisfactory professional performance under the National Law. This threshold is low. Reasonable suspicion has been defined in Western Australia legislation and includes:

A person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

(Section 4 *Criminal Investigations Act 2006*)

Section 141 of the National Law

Registered Health Practitioners and their employers must report to AHPRA if they have formed a reasonable belief that a registered health practitioner has behaved in a way that constitutes notifiable conduct.

Notifiable conduct by registered health practitioners is defined in the National Law as:

- practising while intoxicated by alcohol or drugs;
- sexual misconduct in the practice of the profession;
- placing the public at risk of substantial harm because of an impairment (health issue); or
- placing the public at risk because of a significant departure from accepted professional standards.

The threshold for a person or organisation making a mandatory notification is higher than reasonable suspicion as it requires a reasonable belief that a practitioner has behaved in a way that constitutes notifiable conduct and that their belief is based on reasonable grounds.

The mandatory notifying and reporting obligations are not subject to, or superseded by, any other reporting obligations under another relevant law. If the threshold is met, a matter must be reported, discretion cannot be applied.

Notifiable and Reportable Conduct Guide

Notifying conduct in accordance with the CCM Act

Sections 28 and 31(b) CCM Act

The Principal Officer of a Notifying Authority is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern serious misconduct as soon as practicable.

Sections 45H and 45K(b) CCM Act

The Principal Officer of a Notifying Authority is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern minor misconduct as soon as practicable.

Sections 29 and 45I CCM Act

The duty of the Principal Officer of a Notifying Authority to make a notification under ss28 and 45H CCM Act, is paramount and must be complied with despite –

- a) the provisions of any other Act, whether enacted before or after this Act; or
- b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates; and
- c) the Principal Officer of a Notifying Authority does not commit an offence by reason of that compliance.

Notifying conduct to the Western Australia Police Force (WAPol)

It is the expectation of the Department CEO that Public Officers are held to the same accountability standards as members of the public would be for suspected criminal offences.

The Department CEO, as the System Manager, requires all suspected criminal offences to be reported to WAPol.

Delegations

Unless the power to notify and report under the HS Act and CCM Act have been delegated by the Chief Executive in accordance with s119 of the HS Act, reports to the Department CEO and notifications to External Agencies (AHPRA, CCC and PSC) must be made by the Chief Executive.

The responsibility to comply with these legislative obligations, including assessment and decision making relating to reports and notifications in accordance with the HS Act and the CCM Act, rests with the Chief Executive.

Step 3B	<p>Determining to treat the matter as disciplinary or non-disciplinary, or other resolution.</p> <p>The Responsible Authority determines how to treat the conduct, including, but not limited to:</p> <ul style="list-style-type: none">• treat the matter as disciplinary (Refer to Discipline Policy)• treat the matter as non-disciplinary:<ul style="list-style-type: none">○ take Improvement Action○ take no action○ refer the matter to the relevant area to manage via another process (Unsatisfactory performance (as it relates to the <i>Managing Unsatisfactory and Substandard Performance Policy</i> MP0041/16)
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Notifiable and Reportable Conduct Guide

- enact a power under the HS Act that deals specifically with serious charges and convictions (i.e. ss148 and 150 HS Act).

The Responsible Authority considers the information concerning the Staff Member that may concern Notifiable and Reportable Conduct and undertakes an assessment.

The assessment is based on the information ascertained at this stage, and any legislative requirements, which may include, but is not limited to:

- witness accounts
- supervisory notes
- closed circuit television footage
- letters of complaint
- admissions by the subject Staff Member
- possible risk to the protection of patients
- legislative obligations
- previous adverse history of the subject Staff Member, or
- any other information considered relevant to the Responsible Authority.

Based on this assessment, the Responsible Authority will determine:

- any notifying or reporting obligations; and
- whether the matter would be appropriately dealt with via the options set out in Step 3B of this Process.

Figure 2

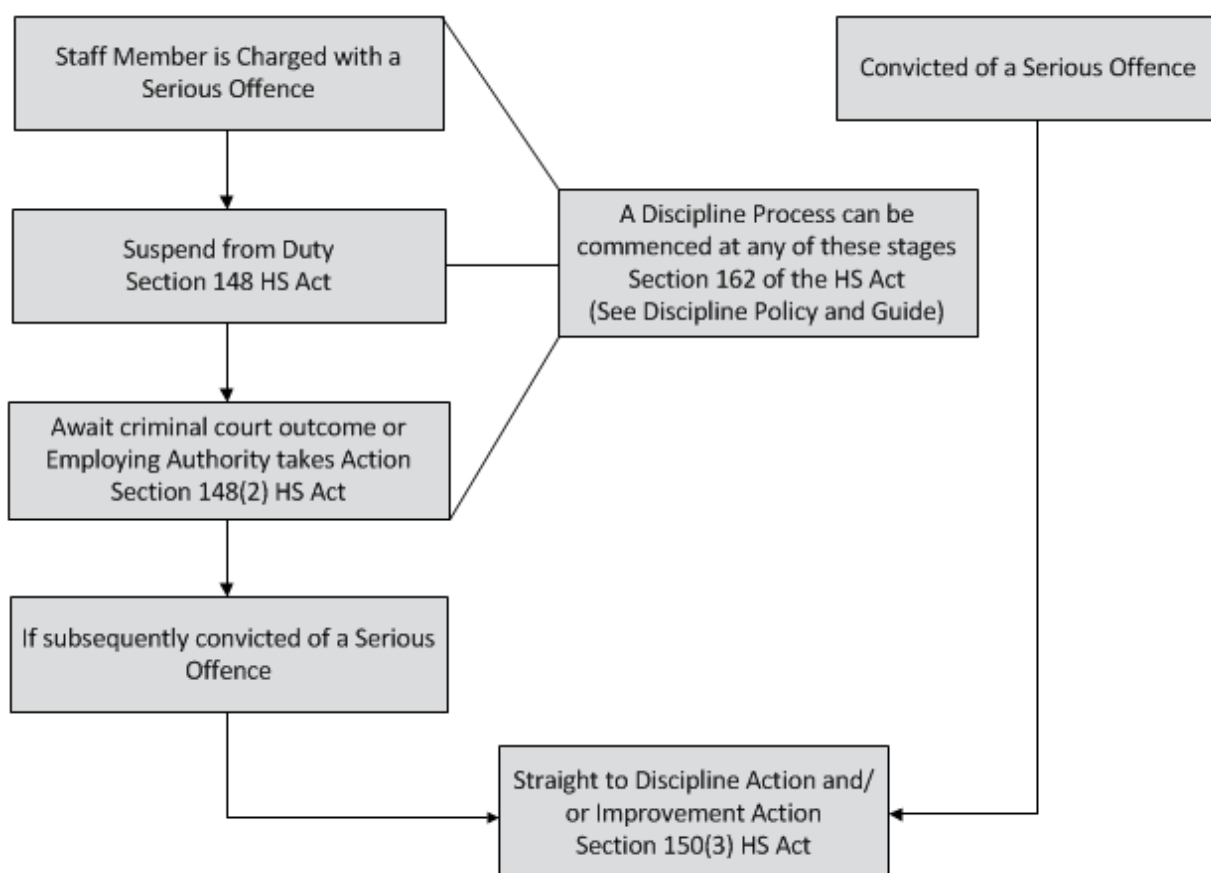


Figure 2 represents the process for enacting a power under the Act that deals specifically with serious charges and convictions (i.e. ss148 and 150 HS Act).

Step 3C	<p>Risk Assessment</p> <p>Step 3A and 3B should be considered concurrently. A risk assessment includes considerations relating to patient safety, organisational risk and reputation, and any other relevant factors determined by the Responsible Authority. Further options and mitigating strategies available to the Responsible Authority arising from determining a pathway, include, but are not limited to:</p> <ul style="list-style-type: none">• suspension from duty• altering Scope of Practice or Duties• taking Discipline Action and/or Improvement Action (in accordance with s150 HS Act)• any other relevant action considered by the Responsible Authority.
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The mandatory Reporting Conduct Template provides an outline of the information required by the Department CEO, in their consideration of s146(3) of the HS Act and the Department CEO's functions as the System Manger.

While it may not always be possible to provide all the required information at the time of initial reporting, the report and/or notification should contain as much of the following information as possible.

Details of the person(s) involved:

- the name of the reporting person, and details of the relevant area(s) affected; and
- the name, employee number, registration number, position title and work location of the employee against whom the allegation is made.

Details of the matter(s):

- the date the allegation became known to the reporting person;
- a summary of the allegation(s) include date(s), location; and
- risk or danger to any person or the public.

Actions by the reporting officer:

- provide details of any preliminary enquiries undertaken;
- describe any action being taken, or proposed actions or processes, for example, the employee:
 - is subject to a discipline process;
 - is subject to suspension from duty (e.g. ss148 or 164 HS Act);
 - has had their scope of practice or duties altered (s164(1)(b) HS Act);
 - is subject to discipline action and/or improvement action (s150 HS Act).
- provide details of relevant legislation, policies and/or procedures.

Note: In the event that an action has not yet been taken, but consideration of the above example provisions is underway, provision of that information within the report to the Department CEO is still required.

Risk Assessment for the Protection of Patients

- In accordance with s146(3) of the HS Act, the Department CEO may, if the CEO considers it appropriate to do so, for the protection of Health Service Provider patients, notify a Health Service Provider or any other person or body of a report received under subsection (1) or (2).

Notifiable and Reportable Conduct Guide

- In order to consider if the report should be provided to other Health Service Providers or any other person or body, sufficient information is required in the s146 report to make this determination.
- Include any information that will assist in this assessment, including detailing if there is no known risk to the protection of patients. If risks are identified, identify any mitigation strategies in place for the protection of patients.

Notifying the relevant Authorities

- During the assessment phase, Health Service Providers are required to undertake an assessment of the conduct to determine whether a matter meets the definition of misconduct in accordance with s4 of the CCM Act, which will require notification to either the CCC or the PSC.
- When making a report to the Department CEO, ensure the inclusion of details that relate to the notification(s) to any external notifying authorities in accordance with relevant legislation. Include –
 - a copy of the report (i.e. to AHPRA, CCC, PSC or WAPol); and
 - any response from the Agency, if applicable (i.e. any action being taken or referral of the matter back to the Health Service Provider for action).

The Department CEO may require further information from a Health Service Provider regarding a report or notification to perform their functions as System Manager.

Health Service Providers are required to report conduct using the approved Reporting Conduct Template to ensure minimum reporting requirements are met.

Note: Reportable and Notifiable Conduct must be concluded, as soon as reasonable practicable, and outcomes are reported to the Department CEO as soon as reasonably practicable and within 30 days, using the Closure Reporting Template.

When a s146 or s167 HS Act report is made to the Department CEO, an assessment is conducted by SWIS to inform the Department CEO in their consideration of s146(3) and s167(4) of the HS Act.

If the Department CEO considers it appropriate, they may notify:

- other Health Service Providers of a s146 report, for the protection of a Health Service Provider patients; and
- any employing authority of the employee of a matter notified under s167 of the HS Act.

A risk assessment includes consideration of the following factors:

- recency of the conduct;
- seriousness of the conduct;
- multiplicity of the conduct (repeated or single occasion);
- any evidence of a pattern of conduct – which may indicate behavioural / performance issues of concern;
- relevance of identified issues to the duties to be performed;
- scope of practice or duties have been altered;
- employment status (including suspension from duty);
- the status of a discipline process;
- notifications to other external agencies;
- previous adverse history or similar conduct;
- risk mitigation strategies implemented by the health service provider; or

Notifiable and Reportable Conduct Guide

- any other relevant considerations.

The prompt and complete reporting of information regarding notifiable and reportable conduct throughout the process and upon conclusion:

- facilitates the ability of the Department CEO to determine relevant actions in accordance with the Act;
- ensures legislative compliance with relevant Acts and obligations;
- demonstrates transparency in decision making and processes across the WA health system; and
- promotes fair and accountable practice of information entered into the CMS, relating to Pre-Employment Integrity Checks (further details in section 5 of this Guide).

10. Definitions

Definition list relevant to this Policy and Guide.

Term	Definition
Administrator	An Administrator is a person who can: <ul style="list-style-type: none"> • Grant CMS access to users; • Grant Administrator access to other users; and • Access, create and export data in CMS.
Breach of discipline	Pursuant to s161 of the HS Act, an Employee commits a breach of discipline if the Employee: <ol style="list-style-type: none"> disobeys or disregards a lawful order; or contravenes – <ol style="list-style-type: none"> any provision of the HS Act applicable to that employee; or any public sector standard or code of ethics; or or a policy framework; or commits an act of Misconduct; or is negligent or careless in the performance of the employee’s functions; or commits an act of victimisation within the meaning of the <i>Public Interest Disclosure Act 2003</i> s15.
Chief Executive	The person appointed by the Department CEO as CE of the Health Service Provider pursuant to s108 of the HS Act.
Conduct	For the purpose of this Policy, Conduct includes: <ul style="list-style-type: none"> • Parts 10 and 11 reports in accordance with the HS Act; • Suspected Misconduct as defined in the CCM Act; • A suspected breach of discipline as defined in the HS Act; and • A Misconduct Finding in accordance with the National

Notifiable and Reportable Conduct Guide

	<p>Law.</p> <p>Misconduct finding includes a finding of unsatisfactory professional performance, unprofessional conduct or professional misconduct.</p>
Criminal Conduct	Where a Staff Member has been charged with having committed, or is convicted or found guilty of a Serious Offence.
Department CEO	The CEO (Director General) of DoH.
Disciplinary Action	<p>As defined by s6 of the HS Act means any one or more of the following:</p> <ul style="list-style-type: none"> (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 Service Provider; (d) if the employee is not a CE, transferring the employee to another office in the Health Service Provider in which the employee is employed; (e) reduction in the monetary remuneration of the employee; (f) reduction in the level of classification of the employee; (g) alteration of the employee's scope of practice or duties, or both; or (h) dismissal.
Employee	<p>Pursuant to s6 of the HS Act means a person employed in a Health Service Provider and includes:</p> <ul style="list-style-type: none"> (a) the CE of the Health Service Provider; (b) a health executive employed in the Health Service Provider; (c) a person employed in the Health Service Provider; or (d) a person seconded to the Health Service Provider.
Employing Authority	<p>Pursuant to section 103 of the HS Act means:</p> <ul style="list-style-type: none"> (a) in relation to a CE, the Department CEO; (b) in relation to a Health Executive employed in a Health Service Provider, is the CE or the Board (whichever governs the Health Service Provider);

Notifiable and Reportable Conduct Guide

	(c) in relation to an Employee in a Health Service Provider, the CE or the Board (whichever has the power to employ or engage Employees in the Health Service Provider).
Improvement Action	As defined by s6 of the HS Act means any one or more of the following: (a) counselling; (b) training and development; (c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory; and/or (d) any other action of a similar nature.
Minor Misconduct	Pursuant to ss3 and 4(d) of the CCM Act, minor misconduct is conduct by a Public Officer that – i. adversely affects the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their official capacity at the time of engaging in the conduct; ii. involves the performance of functions in a manner that is not honest or impartial; iii. involves a breach of the trust placed in the public officer; or iv. involves the misuse of information or material that is in connection with their functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person; and vi. constitutes, or could constitute, a disciplinary offence providing reasonable grounds for termination of a person's office or employment.
Notifying Authority	As defined by the CCM Act, notifying authority means: a) a department or organisation as defined in the <i>Public Sector Management Act 1994 (PSMA)</i> ; b) an entity in respect of which a declaration is in effect under section 56(2) of the <i>Financial Management Act 2006 (FMA)</i> ; c) a statutory authority as defined in the FMA; d) an authority to which the Parliamentary Commissioner Act 1971 applies; e) a person or body, or holder of an office: (i) under whom or which a public officer holds office or by whom or which a public officer is employed;

Notifiable and Reportable Conduct Guide

	<p>or</p> <p>(ii) who or which is prescribed for the purposes of this subparagraph.</p>
Offences Prescribed	<p>In accordance with r15 of the <i>Public Sector Management (General) Regulations 1994</i>, offences:</p> <p>a) which involve –</p> <ol style="list-style-type: none"> i. fraud or dishonesty; or ii. wilful damage to, or destruction of, the property of others; <p>or</p> <p>b) which are committed against the persons of others; or</p> <p>c) which are punishable on conviction by imprisonment for 2 years or more.</p>
Outcome	<p>The outcome of reportable conduct means a resolution of a matter and includes, but is not limited to, matters that are:</p> <ul style="list-style-type: none"> • Substantiated; • Not substantiated; • Discontinued; • Requires no further action; • AHPRA findings; • Court Outcomes; • Any other relevant action.
Principal Officer of a Notifying Authority	<p>Pursuant to s3 of the CCM Act, in the case of a department or organisation as defined in PSMA, means the chief employee of the organisation.</p> <p>The Principal Officer for the Department is the CEO.</p> <p>The Principal Officer for a Health Service Provider is the CE.</p>
Professional Misconduct	<p>For the purposes of s5 of the National Law means misconduct which includes:</p> <ol style="list-style-type: none"> (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 (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 (c) conduct of the practitioner, whether occurring in

Notifiable and Reportable Conduct Guide

	<p>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>
Public Officer	<p>A full definition of the term 'public officer' is found in s1 of the <i>Criminal Code 1913</i>.</p> <p>The term 'public officer' includes:</p> <ol style="list-style-type: none"> a) all public sector employees; b) members of government boards and committees; c) local government elected officials and employees; d) a person exercising authority under a written law; e) employees of public utilities and some volunteers; f) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; g) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not. <p>To enliven the CCC and PSC jurisdiction, the notifiable misconduct must be conducted by a Public Officer.</p> <p>Employees are Public Officers.</p>
Reasonable Suspicion	<p>Pursuant to s4 of the <i>Criminal Investigations Act 2006 (WA)</i>, reasonable suspicion means –</p> <p>A person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.</p>
Registered Health Practitioner	<p>Registered Health Practitioner means an individual who —</p> <ol style="list-style-type: none"> a) is registered under the National Law to practise a health profession, other than as a student; or b) holds non-practicing registration under the National Law in a health profession.
Responsible Area	<p>For the purpose of this policy, the RA is the Health Service Provider's designated area responsible for:</p> <ul style="list-style-type: none"> • receiving complaints/information that may concern Notifiable or Reportable conduct; and/or • assessing information/complaints for the purpose of reporting/notifying conduct; and/or • for ensuring that reports and/or notifications are made

Notifiable and Reportable Conduct Guide

	where required.
Responsible Authority	<p>Pursuant to s144 of the HS Act means the following:</p> <ul style="list-style-type: none"> • In relation to a CE, the Responsible Authority is the Department CEO. • In relation to a Staff Member in a Health Service Provider (other than the CE) the Responsible Authority is the CE of the Health Service Provider.
Serious Misconduct	<p>Pursuant to ss3 and 4(a) (b) and (c) of the CCM Act, serious misconduct is conduct by a Public Officer who –</p> <ol style="list-style-type: none"> a) acts corruptly or corruptly fails to act in the course of their duties; or b) corruptly takes advantage of their office or employment to obtain a benefit or to cause a detriment to any person; or c) acting in the course of their duties or while deliberately creating the appearance of acting in the course of their duties, commits an offence punishable by two or more years imprisonment. <p>Corrupt conduct tends to show a deliberate intent for an improper purpose or an improper motivation.</p> <p>Corrupt conduct may involve an exercise of a public power or function but for private benefit. It may involve conduct such as the deliberate failure to perform the functions of office properly, or the exercise of a power or duty for an improper purpose.</p>
Serious Offence	<p>Has the same meaning as section 80A of PSMA:</p> <p><i>Serious Offence</i> means —</p> <ol style="list-style-type: none"> (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 (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 (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 (d) an offence, or an offence of a class, prescribed under section 108 (see Offences Prescribed).

Notifiable and Reportable Conduct Guide

<p>Staff Member</p>	<p>In relation to a Health Service Provider and pursuant to s6 of the HS Act means:</p> <ul style="list-style-type: none"> (a) an Employee in the Health Service Provider; and/or (b) a person engaged under a contract for services by the Health Service Provider.
<p>Unprofessional Conduct</p>	<p>For the purposes of s5 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"> (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 (b) a contravention by the practitioner of <ul style="list-style-type: none"> 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

Notifiable and Reportable Conduct Guide

	of giving the referral or recommendation.
Unsatisfactory Professional Performance	For the purposes of s5 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.

11. Legislative Obligations Tables

- Legislative obligations table, relating to;
 - Duty of the Department Chief Executive Officer (CEO) as a Responsible Authority, Employing Authority and Principal Officer of a Notifying Authority
 - Duty of the Chief Executive (CE) as a Responsible Authority and Principal Officer of a Notifying Authority
 - Duty of the Chief Executive (CE) or the Board as an Employing Authority
 - Duty of a Staff Member

Duty of the Department Chief Executive Officer (CEO) as a Responsible Authority, Employing Authority and Principal Officer of a Notifying Authority

The Department CEO is legislatively responsible for the purpose of –

Reporting to the Australian Health Practitioner Regulation Agency (**AHPRA**) and Health Service Provider's (**HSPs**) in accordance with the Health Services Act (**HS Act**) and the Health Practitioner Regulation National Law (WA) Act 2010 (**National Law**); and

Notifications to the Corruption and Crime Commission (**CCC**) and the Public Sector Commission (**PSC**) in accordance with the Corruption Crime and Misconduct Act (**CCM Act**).

Legislation	Obligation	Report To	When to Report
S146(1) of the HS Act	The Department CEO is required to report on reasonable grounds a suspicion that a CE's conduct (if the CE is a registered medical practitioner) constitutes, or may constitute Professional Misconduct or Unsatisfactory Professional Performance under the National Law.	AHPRA	When reasonable suspicion has been formed
S146(3) of the HS Act	The Department CEO may, if the Department CEO considers it appropriate to do so for the protection of a HSP's patients, notify a HSP or any other person or body of a report received under s146(1) or (2) of the HS Act.	A HSP or any other person or body	When considered appropriate
S146(5) of the HS Act	The Department CEO may make a notification under s146(3) of the HS Act, despite — a) the provisions of any other Act, whether enacted before or after this Act; or b) any obligation the Department CEO has to maintain confidentiality about a matter to which the report relates.		
S146(6) of the HS Act	Without limiting s220, in giving a notification under subsection (3) the Department CEO — a) does not incur any civil or criminal liability; and b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.		
S167(4) of the HS Act	The Department CEO may notify any employing authority of the employee of the matters notified under s167(2) HS Act.	Employing authority of the employee	When considered appropriate
S220(3) of the HS Act	If the collection, use or disclosure of information is authorised under s220(1) HS Act, — a) no civil or criminal liability is incurred in respect of the collection, use or disclosure; and b) the collection, use or disclosure is not to be regarded as — i. a breach of any duty of confidentiality or secrecy imposed by law; or ii. a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or iii. unprofessional conduct.		
S28 of the CCM Act S31(b) of the CCM Act	The CEO is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern serious misconduct.	The CCC	As soon as practicable
S45H of the CCM Act S45K(b) of the CCM Act	The CEO is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern minor misconduct.	The PSC	As soon as practicable
S29 of the CCM Act S45I of the CCM Act	The duty of the CEO to make a notification under section 28 and 45H of the CCM Act is paramount and must be complied with despite – a) the provisions of any other Act, whether enacted before or after this Act; or b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates, and the CEO does not commit an offence by reason of that compliance.		

Duty of the Chief Executive (CE) as a Responsible Authority and Principal Officer of a Notifying Authority

The CE is legislatively responsible for the purpose of –

Reporting to the Australian Health Practitioner Regulation Agency (AHPRA) and the Department CEO in accordance with the Health Services Act (HS Act) and the Health Practitioner Regulation National Law (WA) Act 2010 (National Law), and

Notifications to the Corruption and Crime Commission (CCC) and the Public Sector Commission (PSC) in accordance with the Corruption Crime and Misconduct Act (CCM Act).

Legislation	Obligation	Report To	When to Report
S146(1)(a) HS Act S146(1)(b) HS Act	A staff member's responsible authority must report any conduct of the staff member that the responsible authority suspects on reasonable grounds constitutes or <u>may</u> constitute professional misconduct or unsatisfactory professional performance under the National Law.	AHPRA and The Department CEO	When reasonable suspicion has been formed
S146(2) HS Act	A Staff Member's Responsible Authority must, on becoming aware that the Staff Member has been charged with having committed, or has been convicted or found guilty of, a serious offence, report the Staff Member's charge, conviction or the finding of guilt to the Department CEO. (Note: this section may constitute Professional Misconduct and would therefore require reporting to AHPRA in accordance with s146(1)(a) of the HS Act).	The Department CEO and AHPRA (if charges/convictions are preferred against a Health Practitioner)	On becoming aware
S146(5) HS Act	The duty of the Responsible Authority to make a report under s146(1) or (2) must be complied with, despite — a) the provisions of any other Act, whether enacted before or after this Act; or b) any obligation the person has to maintain confidentiality about a matter to which the report relates.		
S220(3) HS Act	If the collection, use or disclosure of information is authorised under s220(1) HS Act, — a) no civil or criminal liability is incurred in respect of the collection, use or disclosure; and b) the collection, use or disclosure is not to be regarded as — i. a breach of any duty of confidentiality or secrecy imposed by law; or ii. a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or iii. unprofessional conduct.		
S28 CCM Act S31(b) CCM Act	The CE is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern serious misconduct.	The CCC	As soon as practicable
S45H CCM Act S45K(b) CCM Act	The CE is obligated to report their suspicion on reasonable grounds any matter which concerns or may concern minor misconduct.	The PSC	As soon as practicable
S29 CCM Act S45I CCM Act	The duty of the CE to make a notification under section 28 and 45H of the CCM Act is paramount and must be complied with despite – a) the provisions of any other Act, whether enacted before or after this Act; or b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates, and the CE does not commit an offence by reason of that compliance.		

Duty of the Chief Executive (CE) or the Board as an Employing Authority

The Employing Authority is legislatively responsible for the purpose of –

Reporting to the Department CEO in accordance with the Health Services Act (**HS Act**).

Legislation	Obligation	Report To	When to Report
S148 HS Act S149 HS Act	The Employing Authority may suspend an Employee on full pay, partial pay or no pay if the employee has been charged with having committed a Serious Offence.		
S150(1) HS Act	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.		
S150(2) HS Act	An Employing Authority cannot take action under s150(1) – a) until all rights of appeal under the National Law against the action taken under that Act have lapsed or been exhausted; or b) if the employee successfully appeals under the National Law against the action taken under that Act.		
s150(3) HS Act	The Employing Authority may initiate Disciplinary Action and/or Improvement Action if an Employee is convicted or found guilty of a Serious Offence.		
S167(2) HS Act S167(3) HS Act	The Employing Authority of an employee must notify the Department CEO if – a) the employee has been found under Division 3 to have committed any breach of discipline alleged against the employee; and b) the disciplinary action ordered was dismissal, or the employing authority is of the opinion that the breach of discipline could result in a serious risk to the safety of patients.	The Department CEO	Must be given in writing within 30 days of the finding being made

Duty of a Staff Member

Staff members are legislatively responsible for the purpose of –

Reporting to their Responsible Authority in accordance with the Health Services Act (**HS Act**).

Legislation	Obligation	Report To	When to Report
S145(1) HS Act	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 charge being laid or the conviction.	Responsible Authority	Within 7 Days
S145(2) HS Act	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.	Responsible Authority	Within 7 Days