

## Referral of Ethical Complaints

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### Preamble

Massage & Myotherapy Australia (Association) is a not for profit body representing the professional practice of massage, remedial massage and myotherapy. In order to provide support to members to achieve best practice and levels of excellence, and in order to safeguard the public, the National Ethics Committee (NEC) reviews complaints from the public and other health providers about massage therapists and myotherapists. The NEC has delegated authority from the Board to review complaints and to recommend determinations. The NEC functions strictly within the parameters of the Constitution and Ethical Complaints Guidelines to apply the Code of Ethics and Standards of Practice when hearing complaints and making determinations.

Health Care Complaints entities are independent state and territory bodies that deal with complaints about health service providers under various state-based legislative or statutory instruments. Most States and Territories have established processes and standards to manage complaints made against health providers that are not required to be registered by the Australian Health Practitioners Registration Agency (AHPRA)<sup>1</sup>. Legislation remains being considered in the ACT and Tasmania with a view to have consistent complaints processes nationally (National Code of Conduct for Healthcare Workers).

The Association has aligned its complaints data to categories used by AHPRA. This allows data to be presented using consistent and recognised definitions, and to allow transparent comparison against other health provider groups.

### Aim

- To provide clarification on the classification of complaints reviewed by the NEC
- To establish norms for when, in the opinion of the NEC as a delegate of the Association's Board, complaints, recommendations or other information should be referred to Health Care Complaint Entities for investigation.

### AHPRA Definitions

AHPRA classifies complaints based on established codes and standards of practice into categories of conduct.

### Unprofessional Conduct

AHPRA defines Unprofessional Conduct as '*...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 peers...*'

Unprofessional conduct includes:

1. breach of the National Law
2. breach of a registration condition or undertaking
3. conviction for an offence that may affect suitability to continue practice
4. providing health services that are excessive, unnecessary or not reasonably required
5. influencing, or attempting to influence, the conduct of another registered health practitioner that may compromise patient care

6. accepting a benefit as inducement, consideration or reward, for referrals or recommendations to use a health service provider
7. offering or giving a person a benefit, consideration or reward, in return for providing referrals or recommendations to use a health service provider
8. referring a person to, or recommending another health service provider, health service or health product, if there is a financial interest, unless the interest is disclosed

## Professional Misconduct

AHPRA refer back to the definition of 'unprofessional conduct' when defining Professional Misconduct. The following definitions are designed to capture instances of 'unprofessional conduct' that "...falls substantially below the standard expected of a practitioner of an equivalent level of training or experience...".

Professional misconduct includes:

1. conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience
2. more than one instance of unprofessional conduct
3. conduct that is not consistent with being a fit and proper person to hold registration in the profession

## Notifiable conduct (s. 140)

AHPRA refers to National Law s141 defining 'notifiable conduct' when the registered health practitioner has:

1. practiced the practitioner's profession while intoxicated by alcohol or drugs, or
2. engaged in sexual misconduct in connection with the practice of the practitioner's profession, or
3. placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment, or
4. placed the public at risk of harm because the practitioner has practiced the profession in a way that constitutes a significant departure from accepted professional standards.

Further, 'notifiable conduct' is mandated and practitioners, employers and education providers are all mandated by law to report certain notifiable conduct relating to a practitioner or student.

## Unsatisfactory Professional Performance (s. 5)

APRRA define 'unsatisfactory professional performance' as meaning "...the knowledge, skill or judgement 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...".

## Process

In addition to the AHPRA definitions, the Association uses the Standards of Practice, Code of Ethics and the formal current education of massage therapists and myotherapists in practice, to supplement the AHPRA definitions with the following:

## **Unprofessional Conduct**

Unprofessional conduct examples may include but are not restricted to:

1. Misrepresenting services, qualification or training
2. No assessment of client, duration of assessment too long or inappropriate to condition
3. Excessive time spent on exercise without explanation to the client or relevant qualifications, expertise or exercise knowledge. Lack of documented rationale.
4. Non delivery of agreed service
5. Ignoring clients stated sensitivities and treatment requests
6. Health Insurance rebate fraud and/or poaching or soliciting clients
7. Selling client information with or without the full business
8. Employment disputes
9. Fees not advised prior to service

## **Professional Misconduct**

Professional misconduct examples may include but are not limited to:

1. Inadequate clinic and towel hygiene standards
2. Inappropriate comments, conversation, or social media post about clients
3. Therapist not leaving the room whilst client is dressing and disrobing, unless assistance is requested by the client and/or with their consent
4. Treatment without written consent
5. Consensual sexual relationship with current client
6. Unnecessary proximity to client, reaching over client during treatment
7. Inappropriate touching
8. Treatment detrimental to clients' wellbeing, including injury, ineffective, over treatment
9. Lack of consideration to foreseeable consequences of treatment
10. Failure to ensure clients understanding of the treatment
11. Engaging in practice that the client perceives as disrespectful or harmful disrespectful and harmful practice
12. Failure to refer the client to the relevant health professional where identified treatment is outside scope of practice
13. Application of techniques or modalities for which the therapist is not trained adequately
14. Practicing without professional indemnity and public liability insurances.

## **Unsatisfactory professional performance (s. 5)<sup>ii</sup>**

Unsatisfactory professional performance conduct may include but is not limited to:

1. Ongoing serious pain and health problems following inappropriate treatment
2. Breast massage without written consent from the client and full explanation to client for the requirement for the treatment
3. Failure to cease treatment at clients request
4. Allegation of sexual assault, sexual service and/or sexual misconduct
5. Unsafe application of any technique resulting in injury
6. Therapist being under the influence of drugs (prescription or street) or alcohol whilst working.

## **Notifiable conduct (s. 140)**

AHPRA refers to National Law s141 defining 'notifiable conduct' when the registered health practitioner has:

Upon receipt of a complaint that lies within the definition of 'notifiable conduct', the Association may recommend to the complainant or make complaint to Health Care entities and/or Police when complaints of the following nature of conduct are received.

1. practiced the practitioner's profession while intoxicated by alcohol or drugs, or
2. engaged in sexual misconduct in connection with the practice of the practitioner's profession, or
3. placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment, or
4. placed the public at risk of harm because the practitioner has practiced the profession in a way that constitutes a significant departure from accepted professional standards.

## Referral Health Care Complaints (HCC) Entities

Whilst the Association may be able to refer complaints to the Health Care Complaints entity in each state or territory, the preference is complainants to seek advice or submit a complaint directly to the Health Care Complaints entity in their State or Territory. This information is provided when the complaint is received and is included in the Determination.

State	Office	Response
Victoria	Health Care Complaints (HCC) VIC	<p>The Association may encourage the complainant to contact the HCC directly or the Association may make a complaint on behalf of a person with their consent.</p> <p>More details can be found under the title "Who can make a complaint?" and "How to lodge a complaint with us" on the HCC website <a href="https://hcc.vic.gov.au/public/about-complaints">https://hcc.vic.gov.au/public/about-complaints</a>.</p>
Northern Territory	Health and Community Services Complaints Commission (HCSCC)	<p>The Association may seek consent from the complainant to forward a complaint to the HCSCC. The HCSCC will then correspond with them directly as the complainant.</p> <p>The Association is able to Act as a representative for a complainant, in which case the HCSCC provide an authority form for the complainant to sign and correspondence would go through the Association.</p>
ACT	Human Rights Commission (HRC)	<p>The Association may seek consent from the complainant to refer complaint details to the HRC who will determine what action the HRC will take in relation to the complaint. The HRC will then contact the complainant directly.</p> <p>More information about our complaints process can be found on the HRC website: <a href="https://hrc.act.gov.au/complaints/information-for-people-making-complaints/">https://hrc.act.gov.au/complaints/information-for-people-making-complaints/</a>.</p>

State	Office	Response
Tasmania	Ombudsman Tasmania	<p>The Tasmanian Ombudsman is also the Health Complaints Commissioner.</p> <p>Although amendments to the <i>Health Complaints Act 1995</i> have been passed in Tasmania they have not yet been proclaimed. This means that although a person can make a complaint to the Ombudsman about an unregistered health provider under the Health Complaints Act, the Ombudsman does not yet have any disciplinary powers.</p>
Western Australia	Health and Disability Services Complaints Office (HADSCO) WA	<p>The Association is unable to submit, or forward, a complaint to HADSCO. The WA legislation requires the person who has made a complaint to the Association to make that complaint directly with HADSCO. The Association may encourage the complainant to contact HADSCO directly. The complaints line phone number is 08 6551 7600. Alternatively, they can lodge a complaint online (<a href="https://www.hadSCO.wa.gov.au/Complaints/Complaint-Form">https://www.hadSCO.wa.gov.au/Complaints/Complaint-Form</a>).</p>
NSW	HCCC NSW	No response received to date.
QLD	Office of Health Ombudsman (OHO) QLD	The Association may encourage the complainant to contact the OHO directly. Or the Association may seek consent from the complainant to refer complaint details to the OHO.
SA	South Australian Health and Community Services Complaints Commission (SA HCSCC)	The Association can encourage the complainant to contact the SA HCSCC.

<sup>i</sup> <https://www.ahpra.gov.au>

<sup>ii</sup> *ibid*