

Guide for the Prevention and Management of Sexual Misconduct

This document is provided for massage therapists, remedial massage therapists and myotherapists to promote awareness of the issues of Sexual Misconduct and to assist in the management of any potential or real situations.

In the health care environment, any sexual assault, inappropriate treatment or comment between providers and clients is considered professional sexual misconduct. This behaviour is unethical and an extreme breach of trust, and causes irreparable harm to the victims. This is not a single gender-specific concern as documented cases of same sex practitioner-client/patient misconduct have been recorded.

If you feel in any way that sexual assault or abuse has taken place, Massage & Myotherapy Australia strongly recommends that you contact one of the supporting organisations provided in this document. Discussing the matter with a trained counsellor in this area can help you clarify your complaint while supporting you personally.

If a client/patient of any health service provider reports an incident to you, the practitioner must inform them they are entitled to make a complaint. The appropriate authorities are listed at the end of this document. The client/patient should also register a statement with their local police.

Sexual Misconduct by any health service provider is against the law and should be reported. Ultimately, the client/patient has the right to choose if a complaint is made.

The following list of musts aligns with the Association Code of Ethics and Standards of Practice:

- While the client/patient may not be directly aware of the power imbalance, the practitioner is obligated to understand and control its limits by law.
- Because health professionals are in a position of power relative to the client/patient, the law holds them to a higher standard of behaviour. They must place the interest of the client/patient above their own.
- Ensure all contact is within professional boundaries.
- Keep meticulous records.
- It is not appropriate to engage in any relationship with a current client/patient.
- Mandatory report as required in your state/territory
- Members must observe the highest standards of ethics, integrity and professional conduct¹

Important information

Sexual Misconduct is a very complex problem. It encompasses issues of sex, gender, power and communication.

Massage therapists, remedial massage therapists and myotherapists hold a position of power in relation to their clients/patients in the same way that any healthcare professional does. While the client/patient may not be directly aware of the power imbalance, the practitioner is obligated to understand and control its limits by law.

MYTH

'All Sexual Misconduct is performed by evil and corrupt professionals and if these bad apples were eliminated from the industry all would be well'.

FACT

Studies of professionals involved in sexual boundary violations indicate that sexual misconduct occurs among a diverse group who become involved with clients/patients for a variety of reasons.

All health professionals are at risk of boundary violations under certain circumstances or within normal practice.

What is Sexual Misconduct

Sexual Misconduct can be divided into the following areas:

- sexual assault
- sexual relationship
- inappropriate relationship
- inappropriate treatment
- sexual harassment
- practitioner self-disclosure.
- *Different individuals may perceive and respond to behaviour in different ways. Under Australian law, 'unwelcome conduct' is behaviour that has not been solicited or invited and is regarded by the recipient as undesirable or offensiveⁱⁱ*

Some examples of this would be:

- having a sexual relationship with a client/patient during the course of, or following treatment
- any unnecessary treatment such as breast massage
- making sexual, personal or erotic comments to a client during treatment

The power imbalance between professional and patient negates the possibility of an equal consenting relationship. Even if a patient appears to consent, genuine informed consent cannot be assumed when a professional holds authority, knowledge, or influence over a patient's well-being.ⁱⁱⁱ **Vulnerability factors for health professionals and clients**

- personal life issues/stress
- drug/alcohol abuse
- professional isolation
- mental illness

Professional boundary violations often accompany or precede sexual misconduct. The areas where a professional relationship are defined include boundaries such as appointment time, place, gifts, appropriateness of clothing, language used, disclosure of personal information and physical contact not directly related to the treatment.

Sexual Misconduct/Sexual Harassment

Both sexual misconduct and sexual harassment can create significant problems for the practitioner: the issues are not identical but are equally damaging. The similarity is the abuse of power regardless of the

intent. If the client/patient has maneuvered the practitioner to give comment or invite touch, there is no excuse: the law deems practitioners to have the knowledge to conduct themselves professionally and prevent the behaviour.

While health practitioners may not be aware of their influence, clients/patients usually perceive a power differential between themselves and their treating health practitioners. Given this power differential, any exploitation of the relationship between the client/patient and the health practitioner for the gratification of the practitioner is an abuse of power.

The following list provides some examples of the warning signs that can start a downward slide to sexual misconduct:

- personal conversation intruding on treatment session
- body contact e.g. pats on the shoulder, hugs
- not charging or billing for treatment
- practitioner anecdotal comments, e.g. you have beautiful eyes/skin...
- trips or social events outside the clinic
- dinner, lunches or offers of alcohol
- personal telephone, personal social media or personal SMS contact
- giving a client/patient a lift home
- client/patient or practitioner insisting on the last appointment of the day
- giving a client/patient an inappropriate gift
- poor or inadequate draping.
- operating outside of normal business/clinic hours.

The violations of professional boundaries can be made by either the practitioner or the client/patient. However, because health professionals are in a position of power relative to the client/patient, the law holds them to a higher standard of behaviour. They must place the interests of the client/patient above their own.

Sexual behaviour with a client/patient may affect the clinical judgment of the health practitioner in the management of the client.

Contact with professional peers should be maintained to allow for personal and professional support and critical opinion on how to best manage difficult clients/patient or situations.

What to do if an at-risk situation occurs

The practitioner:

- Must ensure all contact is within normal practice boundaries.
- Must refer the client to another practitioner and cease treatment.
- Should seek advice for personal vulnerability factors for self.
- Must keep meticulous records.
- Must seek professional or legal advice.
- Must contact your Association and insurer for advice or referral.

Understanding when a client/patient-professional relationship has gone wrong, or has that potential, is an important part of working towards resolving the problem.

Consequences of sexual misconduct for the client may include:

- anger
- severe guilt
- relationship breakdown
- hospitalization
- mental health issues and trauma.

Professional behaviour states that practitioners must display a standard of behaviour that warrants the trust and respect of the community, practising ethically and honestly. This aligns with the peer opinion standard, where conduct is judged by the view of reasonable peers in the profession, rather than solely by individual intent.^{iv}

Consequences of sexual misconduct for the practitioner may include:

- relationship breakdown
- mental health breakdown
- public humiliation
- career trauma
- financial loss
- imprisonment
- criminal record.

Sexual relationships with existing or past clients/patients

If the client/patient consents, and even if the client/patient initiates the sexual relationship, it is not acceptable at any time to engage in a personal sexual relationship with a current client/patient.

A relationship is still considered sexual misconduct for the practitioner. It is an abuse of the practitioner-client/patient relationship that puts the practitioner's needs first.

It is *always* the responsibility of the practitioner to establish professional boundaries with present and former clients/patients.

What if my client/patient reports sexual misconduct by another practitioner to me?

You must provide your client/patient with this document which explains professional boundaries.

You should recommend they contact one of the Ombudsman offices or Healthcare Commissions listed in this document and make a formal complaint or contact Massage & Myotherapy Australia who have a formal complaints process for our members' conduct.

The practitioner:

- must not tell the client/patient what to do.
- must not approach the practitioner directly.
- Must abide by mandatory reporting requirements in their state/territory.

Abuse inflicted by those meant to protect us—upon whom vulnerable individuals must rely—is particularly destructive. When trust is violated in this way, the consequences can be long-lasting and severe.^v

The role of Massage & Myotherapy Australia

Members of Massage & Myotherapy Australia are required to act in accordance with the Association's Constitution, Code of Ethics and Standards of Practice, and the National Code of Conduct for Health Care Workers in your state or territory. Members must observe the highest standards of ethics, integrity and professional conduct.

Ethical behaviour is not simply compliance with legal requirements; it extends to honesty, equity, integrity, and social responsibility in all dealings. It is behaviour that holds up to disclosure and to public scrutiny.

Members and the public can register a complaint with Massage & Myotherapy Australia at any time. Massage & Myotherapy Australia encourages the member and client/patient to make a formal complaint so that the matter can be investigated and heard by the relevant legal authority or jurisdiction. The National Ethics Committee which is appointed by the Association's Board can also review or refer such matters.

Matters which are of a serious nature will be referred to the police and/or appropriate authorities.

Complaints can also be made by the client/patient or the practitioner to any of the Health Commissioners or Health Ombudsman in any state or territory.

'Members are responsible for their professional decisions.'

HEALTH OMBUDSMAN/COMMISSIONERS

Victoria

Health Complaints Commissioner
1300 582 113 between 9.30 am and 3.00 pm, Monday to Friday
International calls +61 3 932 3100
www.hcc.vic.gov.au

New South Wales

Health Care Complaints Commission
1800 043 159 (within NSW) between 9.00 am and 5.00 pm, Monday to Friday
www.hccc.nsw.gov.au

Queensland

Office of the Health Ombudsman
133 646 between 9.30 am and 4.00 pm, Monday to Friday
www.oho.qld.gov.au

South Australia

Ombudsman SA
(08) 7322 7020 or Toll Free 1800 182 150 (outside Metro SA only)
www.ombudsman.sa.gov.au

Western Australia

Health and Disability Services Complaints Office (HaDSCO)

1800 813 583 (free from landlines) or (08) 6551 7600 between 8.30 am and 4.30 pm, Monday to Friday

www.hadsco.wa.gov.au

Tasmania

Ombudsman Tasmania

Toll free 1800 001 170 (free from landlines) between 9.00 am and 4.30 pm, Monday to Friday

www.healthcomplaints.tas.gov.au

ACT

Human Rights Commission

(02) 6205 2222

<https://www.hrc.act.gov.au/>

Northern Territory

Health & Community Services Complaints Commission

Toll free 1800 004 474 or (08) 8999 1969 between 8.00 am and 4.00 pm, Monday to Friday

www.hcsc.nt.gov.au

ASSAULT CENTRES

Victoria

Sexual Assault Crisis Line

1800 806 292

www.sacl.com.au

New South Wales

NSW Rape Crisis Centre

1800 424 017 24 hours, 7 days

<https://cbdvsd.com.au/nsw-rape-crisis-centre/>

Queensland

DV Connect

1800 010 120 between 7.30 am and 11.30 pm, 7 days

www.dvconnect.org/queensland-sexual-assault-helpline/

South Australia

Yarrow Place Rape & Sexual Assault Service

Freecall 1800 817 421

www.yarrowplace.sa.gov.au

Western Australia

Sexual Assault Resource Centre (SARC)

Crisis (08) 6458 1828 24 hour, 7 days

Freecall from landlines: 1800 199 888

www.kemh.health.wa.gov.au/services/sarc/

Tasmania

TAS Sexual Assault Support Services Southern Tasmania

1800 697 877 24 hour, 7 days

www.sass.org.au

Laurel House North TAS Ph. 6334 2740

Laurel House North West TAS Ph. 64 31 9711 (a/h crisis) 1800 697 877

www.laurelhouse.org.au

ACT

Canberra Rape Crisis Centre

(02) 6247 2525 between 7.00 am and 11.00 pm, 7 days

www.crcc.org.au

Northern Territory

NT Sexual Assault Referral Services (SARC)

Alice Springs: (08) 8955 4500 or 0401 114 181

Darwin: (08) 8945 0155

Katherine: (08) 8973 8524

Tennant Creek: (08) 8962 4361

<https://nt.gov.au/wellbeing/hospitals-health-services/sexual-assault-referral-centres>

National

Sexual Assault & Domestic Violence National Help Line

1800 Respect (1800 737 732)

ⁱ Code of Ethics and Standards of Practice

<https://www.massagemyotherapy.com.au/Consumers/Code-of-Conduct-and-Complaints/Code-of-Ethics-Complaints>

ⁱⁱ Australian Human Rights Commission, *Sex Discrimination Act 1984 (Cth)* – definition of sexual harassment and “unwelcome conduct” (Australian Human Rights Commission, 2022)

ⁱⁱⁱ Australian Physiotherapy Association *InMotion* article

<https://australian.physio/inmotion/after-professional-relationship-ends?>

^{iv} AHPRA Shred Code of conduct principles <https://www.ahpra.gov.au/Resources/Code-of-conduct/Resources-to-help-health-practitioners/>

^v and severe.”

Reference: Australian Charities and Not-for-profits Commission, *Governance Toolkit: Safeguarding Vulnerable People* (ACNC) <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-toolkit/governance-toolkit-safeguarding-vulnerable-people>