

Managing Misconduct, Serious Performance and Child Related Concerns

Summary This Policy Directive provides a standard approach for managing misconduct and serious performance concerns about staff and visiting practitioners of the NSW Health Service. This includes the management of child related allegations, charges and convictions against anyone working in NSW Health, where the alleged victim was under 18 years of age at the time of the alleged conduct.

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Managing Misconduct, Serious Performance and Child Related Concerns

Policy Statement

NSW Health organisations must manage misconduct, serious performance issues, and child related allegations, charges and convictions in accordance with the principles of procedural fairness and the relevant legislation that applies in each circumstance.

Summary of Policy Requirements

This Policy Directive provides a guide for managing serious complaints and concerns about all employees of NSW Health, including the Ministry of Health, and visiting practitioners. A serious complaint or concern is one that is assessed as alleged misconduct or alleged unsatisfactory performance that may require:

- risk management action involving the staff member to manage risks to patient or staff safety pending any findings about the complaint or concern
- notifications to external agencies
- a disciplinary response if it were to be substantiated
- a response to child related allegations, charges and convictions and/or
- an entry to the NSW Health Service Check Register.

Serious performance concerns to be managed under this Policy Directive may include where a performance management process or performance improvement plan has been in place and the staff member has shown no improvement or refused to participate, or where a single event or a series of events demonstrate performance concerns of a serious nature.

This Policy Directive includes the requirement to meet the main obligations of the [Children's Guardian Act 2019](#) (NSW) in relation to the Reportable Conduct Scheme which includes matters that occur outside the workplace and historical matters.

Confidentiality must be maintained to protect the integrity of the processes of a formal allegation, complaint or concern.

The wellbeing of parties to the process (complainant, witnesses and respondent) must be considered and managed where practicable, for example, with appropriate communications, keeping them up to date, setting realistic expectations about the process and timeframe, and referring them to support services.

When a complaint or concern is raised, the NSW Health organisation must conduct an initial review as soon as practicable to determine the most appropriate action and process to follow and ensure that risks are managed.

A risk assessment must be undertaken, documented and a risk management strategy put in place if the initial review indicates it is required. During this process, personal and other information may be collected including for the purposes of assessing and managing risks and may be provided to other relevant NSW Health organisations and persons with responsibility for managing process and/or outcomes.

Suspension from duty can only occur as a risk management strategy where a risk assessment has been conducted, a potential risk is posed by the staff member remaining at their current work and the potential risk cannot be appropriately managed in any other way.

There are obligations to notify a complaint or concern about a staff member to various internal people and external organisations at different stages throughout the process. External notifications may include, depending on the circumstances, NSW Police, the Australian Health Practitioners Regulation Agency, the Office of the Children's Guardian, the Department of Communities and Justice, other health organisations, the Aged Care Quality and Safety Commission, the NDIS Quality and Safety Commission and the Privacy Commissioner. A notification to an external agency does not negate the requirement for the NSW Health organisation to complete its own inquiries, make findings and determine any appropriate disciplinary or other action.

An investigation must be conducted if the facts of the matter are uncertain and need to be established. Investigations should be managed efficiently by setting the scope, following a time frame, and selecting appropriate investigators. Findings are made on the balance of probabilities.

As part of disciplinary proceedings, the respondent must be advised of the allegations and the relevant, credible and significant evidence that may be relied on in making a finding and given a reasonable opportunity to respond. The investigator and the decision maker must be unbiased. Where the decision maker is proposing to support an adverse finding against a staff member, the staff member must be provided with the opportunity to respond to any proposed disciplinary action (formal warning or termination), change to scope of practice and/or proposed relocation before a final decision is made.

The decision maker should consider, as the paramount consideration, the protection of a NSW Health organisation's patients and clients and of children for whom it is responsible. In particular, Section 119 of the [Health Services Act 1997](#) (NSW) specifies this as the paramount consideration in relation to determining whether to take disciplinary action against a member of staff in respect of serious sex or violence offences. When managing child related matters, the safety, welfare and wellbeing of children, including protecting children from child abuse, must be the paramount concern in all actions and decisions.

Where a staff member's employment is terminated in one part of NSW Health this will apply to any other employment in NSW Health, subject to a show cause process.

Appropriate records of all stages of the process and communication with the staff member and outcomes must be kept on a dedicated and confidential file, separate to a staff member's personnel file. There are specific record keeping requirements for the Ministry of Health and for Reportable Conduct matters.

All matters must be appropriately finalised, and a final review must be undertaken to identify any issues requiring ongoing management or action.

Revision History

Version	Approved By	Amendment Notes
PD2025_021 May-2025	Deputy Secretary, People, Culture and Governance	<p>Amendment notes are to provide a very high-level summary of significant updates and changes.</p> <ul style="list-style-type: none"> Change to scope: policy applies to Ministry of Health and HES. Policy applies to employees and Visiting Practitioners. It may be used for other categories of staff, subject to a risk assessment. Applies to all categories of staff if the matter falls under the Reportable Conduct Scheme. Management of serious performance issues expanded to apply to all staff, not only clinicians. Provision to follow alternative pathways other than investigation. Increased focus on wellbeing of respondent and other parties. General amendments to clarify policy position in some areas. Consolidation of PD2018_031 Managing Misconduct, PD2018_032 Managing Complaints and Concerns about Clinicians and PD2020_044 Managing Child Related Allegations, Charges and Convictions
PD2020_044 November-2020	Deputy Secretary, People Culture and Governance	<p>This version incorporates relevant changes to the Reportable Conduct Scheme provisions under the new <i>Children's Guardian Act 2019</i>, and clarifies obligations around child related conduct that falls outside of the Scheme.</p> <p>It clarifies NSW Health organisations' responsibilities in relation to the alleged victim.</p> <p>It outlines the provisions for seeking additional information from other relevant agencies and sharing information with non-Health employers.</p> <p>It outlines the requirements for managing child related allegations in the context of domestic and family violence, or received through the National Redress Scheme.</p> <p>It introduces a requirement to provide support to staff managing child related matters.</p> <p>It also updates references to FACS and JIRT, and clarifies the role of the NSW Health Child Wellbeing Unit.</p>
PD2018_032 September-2018	Deputy Secretary, People Culture and Governance	<p>Incorporates the previous Guidelines.</p> <p>Provides consistency and alignment with Policies on Managing Misconduct and Managing for Performance.</p> <p>Clarifies the threshold for matters to be managed under this Policy Directive, their notification requirements and investigation outcomes.</p>

PD2018_031 September-2018	Deputy Secretary, People, Culture and Governance	Minor updates for consistency with the NSW Health Policy on Managing Complaints and Concerns about Clinicians: <ul style="list-style-type: none"> • Partial misconduct finding removed • Removal of reference to Part 4 of the Health Services • Regulation 2013 for definition of misconduct for Ambulance Service.
PD2016_025 June-2016	Deputy Secretary, Governance Workforce and Corporate	Updated to link more closely to the Misconduct Policy and to clarify requirements around the management of historic and outside work matters.
PD2014_042 November-2014	Deputy Secretary, Governance, Workforce and Corporate	Revised, consolidated policy relating PD2005_225, PD2005_095 and PD2006_026.
PD2006_026 April-2006	Director-General	New policy.
PD2006_025 April-2006	Director-General	More detailed processes included.
GL2006_002 January-2006	Director-General	New Guideline.
PD2006_007 January-2006	Director-General	New Policy Directive.
PD2005_574 April-2005	Director-General	New Policy replacing Circular 99/65.
PD2005_225 January-2005	Director-General	New policy.
PD2005_095 January-2005	Director-General	New policy.

Contents

1. Background	5
1.1. About this document.....	5
1.1.1. Serious performance concerns	6
1.1.2. Child related allegations, charges and convictions	6
1.2. Management pathway for impairment linked to alleged misconduct	7
1.3. Child Safe Standards	7
1.4. Key definitions	7
1.5. Legal and legislative framework.....	11
2. Receiving complaints and concerns	13
2.1. Information for staff members raising a complaint or concern.....	14
2.2. Rights and responsibilities.....	14
2.2.1. Confidentiality	14
2.2.2. Victimisation.....	15
2.3. Governance of complaints and concerns	15
3. Initial review	16
3.1. Purpose of the initial review.....	16
3.2. Initial review process.....	16
3.3. Issues arising during the initial review.....	18
3.3.1. A complaint or concern is raised anonymously	18
3.3.2. A complaint or concern is about matters that occurred outside the workplace or historically.....	19
3.3.3. A complaint or concern involves an alleged assault	19
3.4. Determining further action	19
3.5. Findings with no investigation.....	20
3.6. No further action	20
3.7. Keeping records of the initial review.....	21
3.8. Receiving a public interest disclosure	21
3.9. Additional considerations for initial review of child related allegations, charges and convictions	21
3.9.1. Paramount consideration for child related allegations	22
3.9.2. Initial response to child related allegations.....	22
3.9.3. Identifying child related allegations.....	22
3.9.4. Seeking additional information for initial review of child related allegations.....	23
3.9.5. Child related allegations against staff member who no longer works in NSW Health ..	23

3.9.6.	Child related allegations arising from clinical procedures.....	23
3.9.7.	Child related allegations related to domestic and family violence.....	24
3.9.8.	Allegations received through the National Redress Scheme.....	24
3.9.9.	Allegations involving child abuse material.....	25
3.9.10.	The child in relation to a child related allegation is now an adult	25
4.	Advising the staff member against whom the complaint is made	26
5.	Managing risk.....	28
5.1.	Advising the staff member about risk management action	29
5.2.	Requests for review of risk management measures.....	29
5.3.	Alternative work arrangements for clinicians	29
5.4.	Staff members working elsewhere in NSW Health – sharing information	30
5.5.	Additional information for risk assessment for child related allegations, charges and convictions	30
6.	Suspension of staff	32
6.1.	Reimbursement of shift penalties and other allowances.....	32
6.2.	Suspension of visiting practitioners.....	33
7.	Notifications	34
7.1.	NSW Health internal notifications	34
7.2.	Reporting conduct to the NSW Police	35
7.3.	Additional reporting for health practitioners	35
7.4.	Additional reporting for child related allegations, charges and convictions	37
7.5.	Other Reporting.....	38
8.	Investigations	40
8.1.	The purpose of an investigation.....	40
8.1.1.	Reportable Conduct investigations.....	40
8.2.	Time frame for investigation	41
8.3.	Selecting investigators	41
8.4.	Providing the staff member with an opportunity to respond to the concerns.....	42
8.5.	Evidence	42
8.6.	Interviews.....	43
8.6.1.	Deciding whether to interview people who have reported assault	43
8.6.2.	Deciding whether the child needs to be interviewed for child related matters.....	43
8.7.	Concurrent external investigations / criminal proceedings.....	44
8.7.1.	Timing of workplace investigations when there are external proceedings.....	44
8.7.2.	Exchanging information with external agencies for child related matters	45
8.7.3.	Seeking information about criminal charges and court proceedings.....	46

8.7.4. Assessing information obtained from external agencies	46
9. Issues arising	48
9.1. Staff member leaves or resigns prior to completion of the process	48
9.2. Unreasonable conduct by complainants	48
9.3. Frivolous, vexatious or misconceived allegations / concerns	48
9.4. Staff member does not cooperate	49
9.5. Staff member is on approved leave during an investigation	49
9.6. Staff member is on sick leave / workers compensation leave during an investigation	49
9.7. Disputes over interview records	50
9.8. Complaints about the investigation / investigator	50
9.9. NSW Police do not lay charges or court finds person not guilty	50
9.10. Allegation is retracted, the complaint withdrawn, or the alleged victim wants no action taken 50	
10. Making Findings	52
10.1. Standard of proof	52
10.2. Options for findings	52
10.2.1. Findings for child related allegations, charges and convictions	53
10.3. Investigation findings and report	53
10.4. The role of the decision maker	53
10.5. Seeking a response from the staff member to proposed adverse findings and proposed action	54
11. Making decisions about action to be taken	55
11.1. Considering an appropriate response to findings	55
11.2. Seeking a response from the staff member about proposed disciplinary or remedial action	56
11.3. Options for action in response to substantiated findings	57
11.3.1. No further action is warranted	57
11.3.2. Remedial (managerial) action	57
11.3.3. Disciplinary action	57
11.3.4. For findings of unsatisfactory performance of employees	58
11.3.5. Addressing systems / organisational issues	58
11.3.6. For staff of the Ministry of Health	58
12. Implementing Decisions and Finalising the Process	59
12.1. Advising the staff member of the final findings and decisions	59
12.1.1. Advising the staff member of final outcomes for child related matters	59
12.2. Advising other parties of the outcome	59
12.3. Notifying the Australian Health Practitioner Regulation Agency	60

**Managing Misconduct, Serious Performance and Child
Related Concerns**

12.4. Final notification to the Office of the Children’s Guardian	60
12.5. Visiting practitioner appeals.....	60
12.6. Action arising from termination of employment or appointment	60
12.7. Record Keeping.....	61
12.8. Finalising the process	61

1. Background

1.1. About this document

This Policy provides a guide for managing serious complaints and concerns about all employees of NSW Health, including the Ministry of Health, and visiting practitioners. Unless particular circumstances require otherwise, the approach in this Policy ought to be followed. This Policy must be used in conjunction with other relevant NSW Health policies.

This Policy applies to staff of the NSW Public Service Senior Executives and Health Executive Service, however, it does not limit the employer's ability to take action under Section 41 of the [Government Sector Employment Act 2013](#) (NSW), or section 121H of the [Health Services Act 1997](#) (NSW) as applicable.

For the purposes of Reportable Conduct, this Policy will apply to those who are captured by the definition of 'employee' under the [Children's Guardian Act 2019](#) (NSW) which is broad and may include contractors, volunteers, staff of third-party employers and students on clinical placement and where the definition of reportable conduct under the [Children's Guardian Act 2019](#) (NSW) is met. Complaints and concerns involving child related allegations, charges and convictions may constitute misconduct, or Reportable Conduct, or both.

If a decision is made to conduct an investigation into a contractor (other than a visiting practitioner), agency staff, student or volunteer, this Policy may be used to guide the process, subject to a risk assessment that balances competing interests having regard to the circumstances at hand.

A serious complaint or concern is one that is assessed as alleged misconduct or alleged unsatisfactory performance that may require:

- risk management action involving the staff member to manage risks to patient or staff safety pending any findings about the complaint or concern, and/or
- notifications to external agencies, and/or
- a disciplinary response if it were to be substantiated and/or
- a response to child related allegations, charges and convictions and/or
- an entry to the NSW Health Service Check Register in accordance with NSW Health Policy Directive [Service Check Register for NSW Health \(PD2021_017\)](#).

This includes cases where the staff member has stopped working in NSW Health after receipt of the complaint or concern, but had they remained, the above actions would have been required.

Less serious matters such as low-level misconduct, behaviour, grievance or performance issues that do not meet these thresholds should not be managed under this Policy. This includes complaints or concerns where the identified risks do not require risk management action to manage patient, staff or visitors' safety, no external notifications are required and/or there is unlikely to be disciplinary action.

Information sheets have been developed to provide guidance and support in meeting the requirements of this Policy. It is not mandatory to use these, however it should be noted that if they are based on legislative provisions, then such legislative provisions will apply anyway. They are available on the NSW Health's intranet webpage [Conduct and performance](#).

The overall process for managing serious complaints and concerns is summarised in [Information Sheet 1: Misconduct process summary](#) on the NSW Health intranet webpage Conduct and Performance.

1.1.1. Serious performance concerns

Performance is understood to be more than the completion of assigned tasks and duties, effective performance lies not only in what we do but also in how we do it. The overlap between conduct and performance expectations means that there will not always be a clear distinction between a failure to meet performance standards and a failure to comply with expected behaviours.

Most concerns about performance will be managed according to the NSW Health Policy Directive *Leading Performance, Development and Talent Management* ([PD2023_043](#)).

Serious performance concerns to be managed under this Policy may include:

- where a performance management process or performance improvement plan has been in place and the staff member has shown no improvement and/or not participated
- where a single event or a series of events demonstrate performance concerns of such a serious nature that it may be appropriate to be managed under this Policy.

For clinicians, serious performance concerns requiring action under this Policy include:

- an incident/s of substandard clinical care
- poor or adverse clinical outcomes, including:
 - higher than expected complication rates
 - higher than expected mortality rates
 - a single catastrophic clinical error or a series of significant clinical errors.

1.1.2. Child related allegations, charges and convictions

This Policy must be followed for child related allegations, charges and convictions. These include any allegations or criminal charges or convictions against a NSW Health staff member where the reported victim was/is under the age of 18 years at the time of the alleged behaviour.

This Policy includes the main requirements of the [Children's Guardian Act 2019](#) (NSW) in relation to the Reportable Conduct Scheme, as specified under Part 4 of that Act. The Reportable Conduct Scheme includes matters that occur outside the workplace and historical matters. If a matter falls under the Reportable Conduct Scheme, NSW Health organisations must meet the requirements of the [Children's Guardian Act 2019](#) (NSW) and cooperate with the Office of the Children's Guardian.

For the purposes of Reportable Conduct, this Policy will apply to those who are captured by the definition of ‘employee’ under the [Children’s Guardian Act 2019](#) (NSW) which is broad and may include contractors, volunteers, staff of third-party employers and students on clinical placement. If the allegations are captured under the Reportable Conduct Scheme, this Policy Directive must apply (refer to the definition of “employee” for the purposes of Reportable Conduct and the flow chart in [Information Sheet 8: Reportable Conduct](#)).

1.2. Management pathway for impairment linked to alleged misconduct

Complaints and concerns about staff members may give rise to concerns about physical or mental impairment, disability, condition or disorder (including substance abuse or dependence). These concerns may need to be managed having regard to the circumstances, for example considering reporting requirements and evaluating fitness for duty.

Where impairment or alleged impairment is identified, the NSW Health organisation must assess whether the matter should be managed under the Premier’s Memorandum M2010-18 [Procedures for Managing Non-Work Related Injuries or Health Conditions](#) (in addition to or instead of managing under this Policy), subject to the requirements for external notification to the Australian Health Practitioner Regulation Agency (Ahpra) if there is a reasonable belief that a registered health practitioner is placing the public at risk of substantial harm in the practice of their profession.

1.3. Child Safe Standards

NSW Health is committed to implementing the Office of the Children’s Guardian [Child Safe Standards](#). The Standards are a key recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Standards are a best practice, evidence-based, quality improvement framework. They provide tangible guidance for organisations to create cultures, adopt strategies and act to put the interests of children first, to keep them safe from harm. The Children’s Guardian Amendment (Child Safe Scheme) Act 2021 requires NSW Health to implement the Standards.

With regard to child related matters the primary focus of this Policy is managing the processes relating to the staff member. Other NSW Health policies provide comprehensive guidance on managing children at risk of harm and other non-staff related reporting obligations, such as NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* ([PD2013_007](#)).

1.4. Key definitions

Child	Person under the age of 18 years of age as defined by Part 4 of the Children’s Guardian Act 2019 (NSW).
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Managing Misconduct, Serious Performance and Child Related Concerns

<p>Child related allegation or charge</p>	<p>Allegation or criminal charge against a NSW Health staff member where the alleged victim was/is under 18 years of age at the time of the alleged conduct/incident. A child related allegation or charge may fall under the Reportable Conduct Scheme.</p>
<p>Child related conviction</p>	<p>Conviction (in NSW or elsewhere), including a finding of guilt without the court recording a conviction, against a NSW Health staff member for an offence involving a victim that was under 18 years of age at the time the offence took place. A child related conviction may fall under the Reportable Conduct Scheme.</p>
<p>Clinician</p>	<p>Same meaning as “health practitioner”.</p>
<p>Health practitioner</p>	<p>An individual who practises a health profession (such as medical practitioners, nurses, dentists) and who is registered under the Health Practitioner Regulation National Law (NSW). A Health Practitioner also includes staff that provide a health service but that are not required to be registered under the National Law, for example speech pathologists and dieticians.</p>
<p>Joint Child Protection Response Program (JCPRP)</p>	<p>Tri-agency program delivered by the NSW Police Force, Department of Communities and Justice, and NSW Health. It provides a seamless service response to children and young people at risk of significant harm as a result of serious sexual abuse, physical abuse and/or neglect.</p>
<p>Misconduct</p>	<p>Has its ordinary meaning and may include:</p> <ul style="list-style-type: none"> • Behaviour or conduct which seriously or repeatedly breaches expected standards, such as those identified in relevant legislation (such as the Health Services Act 1997 (NSW) or the Health Practitioner Regulation National Law (NSW)), registration standards or codes/guidelines approved by a National Health Practitioner Board or NSW Health policies (such as the NSW Health Policy Directive NSW Health Code of Conduct [PD2015_049]). • Refusal to carry out a lawful and reasonable direction given by a line manager or another member of staff authorised to give the direction. • Reportable Conduct as defined under the Children’s Guardian Act 2019 (NSW) (including allegations relating to conduct outside the workplace). • Corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW).

Managing Misconduct, Serious Performance and Child Related Concerns

	<ul style="list-style-type: none"> • Serious wrongdoing that could be the subject of a public interest disclosure under the Public Interest Disclosures Act 2022 (NSW), for example relating to corrupt conduct, maladministration, serious and substantial waste of public money, or failure to deal appropriately with Government Information. • Criminal charges or convictions that have an adverse impact on the workplace or the role or performance of the staff member (including such offences committed outside the workplace and/or work hours, or prior to appointment to NSW Health). • Making vexatious allegations or knowingly making false or misleading public interest disclosures. • A failure to comply or cooperate with the processes for investigating or managing misconduct set out in this Policy Directive. • For staff of the Ministry of Health, misconduct also extends to the provisions of Part 5 Section 69(1) of the Government Sector Employment Act 2013 (NSW).
<p>Notifiable conduct</p>	<p>Notifiable conduct is defined in the Health Practitioner Regulation National Law (NSW) to mean:</p> <ul style="list-style-type: none"> • practising their profession while intoxicated by alcohol or drugs • engaging in sexual misconduct in connection with the practice of their profession • placing the public at risk of substantial harm because of an impairment, or • placing the public at risk of harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.
<p>NSW Health organisation</p>	<p>For the purposes of this Policy, is any public health organisation as defined under the Health Services Act 1997 (NSW), the Ambulance Service of NSW, Health Infrastructure, HealthShare NSW, NSW Health Pathology, any other Health Administration Corporation entities, and Albury-Wodonga Health in respect of staff who are employed in the NSW Health Service.</p>
<p>NSW Health Service</p>	<p>All persons employed under Chapter 9, Part 1 of the Health Services Act 1997 (NSW).</p>

Managing Misconduct, Serious Performance and Child Related Concerns

Office of the Children’s Guardian	A statutory NSW government agency responsible for overseeing organisations that provide services to children. The powers and functions of the Children's Guardian are defined in the Children’s Guardian Act 2019 (NSW).
Professional misconduct	As defined in section 139E of the Health Practitioner Regulation National Law (NSW) for registered health practitioners as: <ul style="list-style-type: none"> (a) unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner’s registration; or (b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner’s registration.
Reportable allegation	Allegation that a staff member has engaged in conduct that may be Reportable Conduct under the Children’s Guardian Act 2019 (NSW).
Reportable Conduct	Defined under Part 4 of the Children’s Guardian Act 2019 (NSW). See Information Sheet 8: Reportable Conduct .
Reportable Conduct Scheme	A scheme operated by the NSW Office of the Children’s Guardian under the Children’s Guardian Act 2019 (NSW) that monitors how certain organisations ('relevant entities') investigate and report on certain types of conduct ('reportable allegations' or 'reportable convictions') made against their current employees, volunteers or contractors. For information on how the Reportable Conduct Scheme applies to NSW Health organisations, see Information Sheet 8: Reportable Conduct .
Reportable conviction	Conviction, including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, of an offence involving Reportable Conduct under the Children’s Guardian Act 2019 (NSW).
Respondent	A person who is the subject of a complaint or concern.
Safety Action Meeting (SAM)	Regular meeting of local government and non-government service providers that aims to prevent or lessen serious threats to the safety of domestic violence victims through targeted information sharing and responsive, timely and targeted actions.

Serious performance issue	Performance that is determined by the employer to be continued unsatisfactory performance and/or a performance deficit of a serious nature that such that it is not appropriate to be managed under the organisation’s performance management policy.
Staff member	Employed staff, visiting practitioners, contractors, agency staff, students.
Support person	A person nominated by a respondent, complainant or witness to accompany them to any meeting, and to provide them with emotional and/or other support throughout the process. This could be a colleague, friend, family member, lawyer, union representative, or other nominated person. It should not be someone who is involved in the matter or has any other conflict. The support person does not represent the person being interviewed or advocate or make representations on their behalf, and they are subject to confidentiality requirements.
Unsatisfactory professional conduct	As defined in sections 139B – 139D of the Health Practitioner Regulation National Law (NSW) .

1.5. Legal and legislative framework

Relevant legislation includes:

- [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW)
- [Children’s Guardian Act 2019](#) (NSW)
- [Crimes Act 1900](#) (NSW)
- [Crimes \(Domestic and Personal Violence\) Act 2007](#) (NSW)
- [Government Sector Employment Act 2013](#) (NSW)
 - Note that Sections 69 and 70 of the GSEA only apply to the Ministry of Health
- [Government Sector Employment Rules 2014](#) (NSW)
 - Note that Sections 40 and 41 of the GSER only apply to the Ministry of Health
- [Health Care Complaints Act 1993](#) (NSW)
- [Health Practitioner Regulation National Law \(NSW\)](#)
- [Health Records and Information Privacy Act 2002](#) (NSW)
- [Health Services Act 1997](#) (NSW)
- [Health Services Regulation 2018](#) (NSW)
- [Independent Commission Against Corruption Act 1988](#) (NSW)
- [Public Health Regulation 2022](#) (NSW)

- [Public Interest Disclosures Act 2022](#) (NSW)
- [Surveillance Devices Act 2007](#) (NSW)
- [Work Health and Safety Act 2011](#) (NSW)
- [Work Health and Safety Regulation 2017](#) (NSW).

Where this legislation is updated, amended or replaced from time to time, the updated legislation applies.

2. Receiving complaints and concerns

A complaint or concern may be received verbally or in writing. All verbal complaints or concerns must be documented by the person receiving the information if the person raising the complaint or concern is unable or unwilling to do so.

Complaints and concerns about staff members may be identified via various mechanisms such as:

- From a patient, a family member of a patient, a person external to the NSW Health system or anonymously. This includes matters related to clinical procedures and matters raised directly by a child.
- From a manager or colleague's observations, including during normal performance or peer review processes or from a review of clinical outcomes or patient records.
- From information received from another NSW Health organisation.
- Information in circulation in the public domain, either through formal channels covering matters under investigation (such as press reporting) or informal channels (social media).
- A notification to the NSW Health organisation of suspected professional misconduct or unsatisfactory professional conduct as defined under the [Health Practitioner Regulation National Law \(NSW\)](#), unsatisfactory performance or possible impairment from a serious adverse event review (see NSW Health Policy Directive *Incident Management* [PD2020_047]).
- Information provided by an external agency (such as from the Coroner, Health Care Complaints Commission, NSW Police or Department of Communities and Justice).
- Self-disclosure by a staff member.
- Information provided by a Child Wellbeing Unit, the Joint Child Protection Response Program's (JCPRP) Joint Referral Unit, a local JCPRP Unit, the NSW Police, or the Department of Communities and Justice (DCJ). Such information may be provided directly to the relevant NSW Health organisation or via the Ministry of Health.
- A presentation to an emergency department or other NSW Health facility or service.
- Disclosure by a domestic and family violence or sexual assault victim where the perpetrator is a NSW Health staff member.
- Information gained at a Safety Action Meeting (SAM) regarding a NSW Health staff member who is a 'person of interest' in domestic and family violence where children are involved.
- A request for information or child safe report from the Australian Government's [National Redress Scheme](#) for people who have experienced institutional child sexual abuse.
- Notification of an interim or permanent bar on a staff member's Working With Children Check or a ban on a staff member's National Disability Insurance Scheme Worker Check or Aged Care Check.

2.1. Information for staff members raising a complaint or concern

Staff members who want or are required to formally report a complaint or concern about another staff member should discuss it with their manager, another manager, or a representative from human resources. Complaints and concerns can be raised verbally, although it is recommended that this is followed up in writing.

After a complaint or concern has been raised, the person managing the complaint will conduct an initial review (see [Section 3](#) of this Policy) and decide how it will be progressed.

It is not uncommon or unreasonable for a complainant to have preferences about the handling of their complaint and any interim measures, especially if they have been personally affected. If the complainant has a view, it should be considered, but it should not determine the organisation's approach to managing the complaint.

All staff are encouraged to attempt to resolve low-level grievances with other staff members directly with the other party (see the NSW Health Policy Directive *Resolving Workplace Grievances* ([PD2016_046](#)) for further information).

2.2. Rights and responsibilities

[Information Sheet 3: Rights and responsibilities handout](#) describes the key rights and responsibilities for a person making a complaint, the person subject to the complaint or concern, other witnesses, those involved in managing the matter and support people.

2.2.1. Confidentiality

Once a complaint or concern has been formally raised, all parties involved must maintain appropriate confidentiality throughout the process. This includes the complainant, the subject of the complaint, witnesses, the investigator and the decision maker.

Matters related to a formal allegation, complaint or concern (including the identity of those involved) must only be discussed with people who have a specific role in relation to the issue (for example, an investigator, manager, support person, human resources or union representative), and such discussion must be restricted to matters relevant to that role. No information is to be provided to third parties unless this is necessary to effectively manage the issue or required by relevant policies or legislation. However, the respondent, complainant and witnesses may discuss the matter confidentially with providers of mental health and wellbeing support such as the Employee Assistance Program, their treating practitioner and/or their support person.

Gossiping and spreading rumours are not permitted. Inappropriate breaches of confidentiality by any party, including the support person (if a NSW Health staff member) may be investigated in accordance with this Policy and could result in a disciplinary outcome.

2.2.2. Victimisation

Staff are not to retaliate against or victimise anyone for their participation in the process, whether a complainant, witness or respondent. Victimisation may be investigated in accordance with this Policy and could result in a disciplinary outcome.

2.3. Governance of complaints and concerns

NSW Health organisations must have a panel of senior staff to oversee the governance of complaints and concerns which involve clinicians. This panel must include representatives from the functional area of the Director of People and Culture or equivalent, and from the functional area of the Director of Clinical Governance or equivalent.

A NSW Health organisation may choose whether to adopt the same approach to concerns and complaints about non-clinical staff.

3. Initial review

When a complaint or concern is raised, the NSW Health organisation must conduct an initial review as soon as practicable. A non-mandatory template is available, see [Information Sheet 4: Initial Review Template](#).

3.1. Purpose of the initial review

The purpose of an initial review is to determine the most appropriate action and process to follow and ensure that risks are managed. Complaints and concerns that arise in the workplace are diverse and the appropriate response must consider a range of factors.

At the conclusion of the initial review a decision will be made that will result in one of the following next steps:

- Staff member will be directed to follow a grievance management process, either self resolution or assisted resolution (see NSW Health Policy Directive *Resolving Workplace Grievances* ([PD2016_046](#))).
- If the facts are objectively clear the allegations may be referred to a decision maker (see [Section 3.5](#) about findings with no investigation).
- An investigation will be conducted in accordance with this Policy.
- Matter is to be managed under a different process or different policy, for example, NSW Health Policy Directive *Leading Performance, Development and Talent Management* ([PD2023_043](#)).
- No further action will be taken.

There are specific requirements for child related allegations, charges, and convictions, refer to [Section 3.9](#) for further information.

3.2. Initial review process

The initial review is a diagnosis of the issue and the formulation of a tailored response that addresses the behaviour in context. A formal investigation is one option available to NSW Health organisations when behaviour does not meet expectations, but it will not be a suitable or proportionate response in every case. For advice about alternative processes, refer to NSW Health Policy Directive *Prevention and Management of Unacceptable Workplace Behaviours* ([PD2025_022](#)).

The initial review will entail gathering readily available information, which may include speaking to the person who raised the matter, to clarify the specifics of the complaint or concern to:

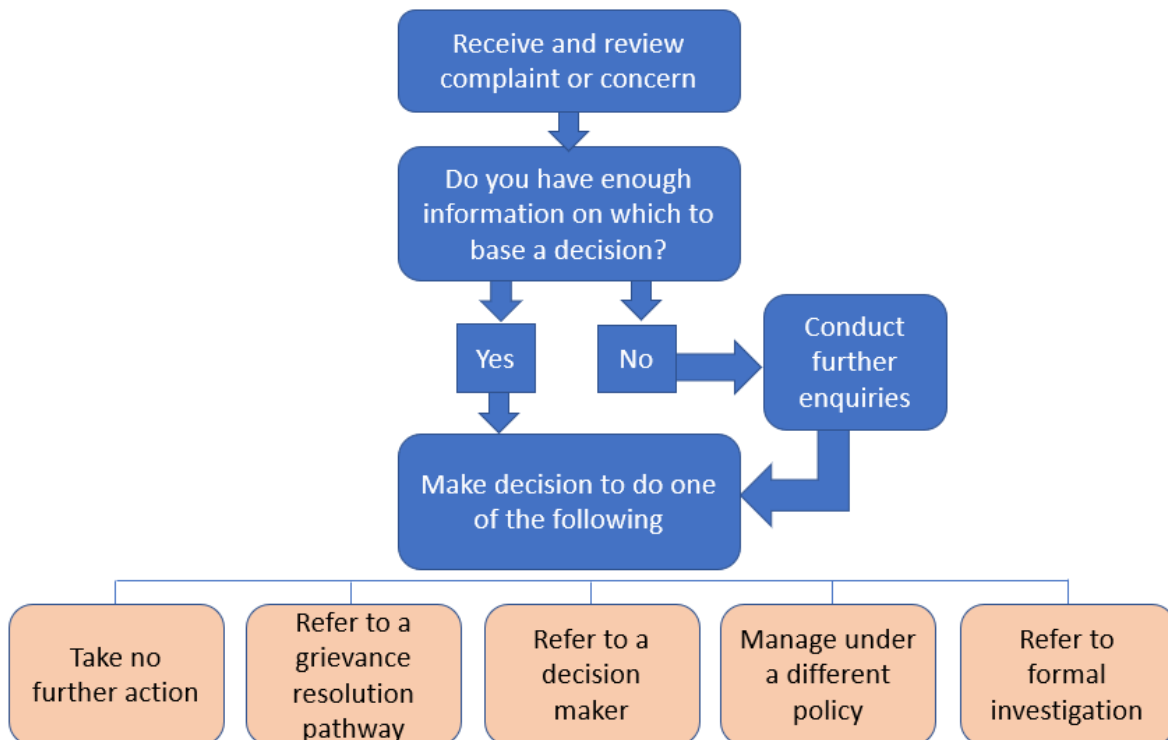
- identify any risks to the safety and welfare of any alleged victims, patients, visitors, staff, complainant, respondent, or any other parties, that need to be managed immediately
- determine, as far as possible, the credibility, nature and seriousness of the matter including identifying:

**Managing Misconduct, Serious Performance and Child
Related Concerns**

-
- what policies, guidelines, standards or protocols may have been, or have been, allegedly breached or not met
 - if patients or other persons have been, may have been or could be affected or harmed
 - if there appears to be evidence of impairment
 - if further clarification is needed.
- consider the need for and timing of any advice to the staff member who is the subject of the complaint (see [Information Sheet 7: Providing advice to the staff member of allegations](#))
 - identify if the complaint or concern meets the threshold for being managed under this Policy and/or if other NSW Health policies need to be applied (see [Information Sheet 5: Identifying relevant NSW Health Policy Directives / Guidelines](#))
 - identify the most appropriate department to manage the matter and whether any other departments need to be involved
 - identify any immediate internal and external notifications that must be made (see [Section 7](#)), including the NSW Health Service Check Register
 - notify the Office of the Children's Guardian about allegations that fall under the Reportable Conduct Scheme, within 7 days (see [Section 3.9](#) for additional considerations when reviewing child related allegations, charges and convictions)
 - identify who is responsible for ensuring appropriate and regular communication with the respondent, the complainant, and other affected parties. If a formal process is to be followed, this may entail allocating the matter to a case manager who is the single point of contact and may also manage the appointment of and ongoing liaison with an investigator
 - take steps to protect any sensitive or time limited information or evidence that may be needed
 - consider what feedback is to be communicated to the complainant about the outcome of the initial review, to the extent that it does not breach privacy or confidentiality
 - decide on next steps.

Gathering further evidence to inform a decision about how to proceed is distinct from the process in a misconduct investigation of establishing facts on the balance of probabilities. The initial review is to be undertaken to the extent necessary for the NSW Health organisation to make an informed decision about how the matter is to be handled. However, in some cases, the facts may become clear at the initial review stage and an investigation may not be necessary in order to make a finding. In such cases refer to Section 3.5 of this Policy.

The Initial Review Process



3.3. Issues arising during the initial review

3.3.1. A complaint or concern is raised anonymously

Not being able to identify the complainant does not of itself prevent the NSW Health organisation from acting. Action taken will depend on the level of detail provided, the ability to obtain further detail and the nature and seriousness of the complaint or concern.

If there is insufficient information or detail to make any enquiries or take any action, this must be noted and the complaint or concern filed in a secure and confidential place. When assessing action to respond to an anonymous complaint or concern, the following factors should be considered:

- Are there any details that can be confirmed or refuted, for example:
 - was any context provided?
 - were details of the alleged behaviour provided?
 - was there a timeframe?
 - was any workplace named?
 - were details of any reported victims or witnesses given?
 - was any physical or other evidence provided?

- Contact with a NSW Health organisation or external agency to confirm if they have any information in relation to the complaint or concern, including where relevant a NSW Health Child Wellbeing Unit, NSW Police and/or the DCJ.
- If the complainant can be identified and/or contacted for further clarification.

3.3.2. A complaint or concern is about matters that occurred outside the workplace or historically

Conduct that occurred outside the workplace, including criminal charges, must be assessed for relevance to the staff member's employment or workplace to determine if any action is required.

A complaint or concern about non-work related conduct or historical conduct must be managed in accordance with this and/or any relevant NSW Health policy where:

- The complaint or concern involves a child related allegation, charge or conviction, where specific requirements apply under the [Children's Guardian Act 2019](#) (NSW).
- The staff member has been charged with or convicted or found guilty of a serious offence, such as a sexual, violence or drug related offence.
- Other information is received which indicates there is a risk to patient or staff safety, to NSW Health property or to the reputation of NSW Health.
- The conduct has been assessed as having a relationship to their work role.

NSW Health organisations sometimes receive allegations of historical misconduct, or otherwise become aware of suspected misconduct from some considerable time in the past. How long ago the alleged behaviour occurred may be a relevant consideration in deciding what action to take, having regard to the availability of evidence, the resources that can reasonably be allocated to considering the matter, and the impact of the allegation and its handling on the organisation. However, if the matter is captured under the Reportable Conduct Scheme, the requirements of the [Children's Guardian Act 2019](#) (NSW) will apply.

3.3.3. A complaint or concern involves an alleged assault

Where a complaint or concern involves an alleged physical or sexual assault by a staff member, immediate advice must be sought from people with expertise in this area, such as from a NSW Health Sexual Assault Service in the case of alleged sexual assault. The relevant Director of People and Culture, or equivalent, must always be notified.

See [Section 7.2](#) Reporting criminal conduct to NSW Police for information about reporting an assault, and Section 4 of NSW Health Policy Directive *Responding to Sexual Assault (adult and child) Policy and Procedures* ([PD2020_006](#)).

3.4. Determining further action

Where the initial review indicates that the complaint or concern does not meet the threshold for management as misconduct or serious performance (for example, is assessed as a low level breach of the NSW Health Code of Conduct ([PD2015_049](#)), grievance, and/or a performance issue that is not of a serious nature, and so on), this outcome must be

documented. Any further action, appropriate to the circumstances, may be taken in accordance with the relevant policies or processes. Further action could include, for example, training, manager-assisted resolution, performance management, or other remedial action.

Where an initial review indicates that an allegation is credible or there is an indication of apparent misconduct, a serious performance issue, or that the matter involves a child-related allegation, charge or conviction, appropriate action must be taken to address the matter in accordance with this Policy.

The involvement of an external regulatory or investigative body, such as the NSW Police, DCJ, or a relevant professional council, does not detract from the NSW Health organisation's responsibilities. As the employer, NSW Health organisations are to manage risks, complete an internal investigation or enquiries, make sound findings and decisions about the staff member's ongoing role in the workplace and to identify and manage any staff or patient safety, clinical safety or quality issues. See [Section 8.7](#) for further information about proceeding with a workplace investigation when an external agency is involved in the matter.

Refer to [Section 3.9](#) for additional considerations when conducting an initial review for child related matters.

3.5. Findings with no investigation

An investigation into an allegation or apparent incident of misconduct takes place if the facts in relation to the allegations are uncertain and need to be established. Where the facts are objectively clear, findings arising from the initial review can at that stage be provided to the decision maker, who must either accept or reject them, and then decide what action should be taken in response to the findings.

If the employer considers making a finding during an initial review, based on objectively clear facts, the decision making process in Sections [10](#), [11](#) and [12](#) should be followed. The respondent must be given an opportunity to respond to the proposed allegations and any proposed adverse findings, including why they say the facts are not clear. Any response must be given due consideration. A staff member subject to an adverse finding in such circumstances must be provided with procedural fairness such as being provided with evidence (as described in [Section 8.4](#)), a reasonable opportunity to respond to proposed finding/s (as described in [Section 10.5](#)) and any proposed disciplinary action (as described in [Section 11.2](#)).

The requirements of any additional relevant policies identified during the initial review must also be followed (see [Information Sheet 5: Identifying relevant NSW Health Policy Directives / Guidelines](#)).

3.6. No further action

After the initial review, the NSW Health organisation may decide to take no further action under this Policy. Reasons for this may include:

- if the complaint is vexatious or frivolous
- the matter doesn't amount to misconduct or serious performance issue
- it could be difficult or unsafe to establish the facts of the matter.

Note that for Reportable Conduct, reporting to the Office of the Children's Guardian is still required.

3.7. Keeping records of the initial review

Appropriate documentation must be kept about an allegation or incident of potential misconduct, the initial review, and any recommendations for further action, or a decision not to proceed further. [Information Sheet 15: Record keeping checklist](#) describes the employer's record keeping requirements.

3.8. Receiving a public interest disclosure

Any manager can receive a public interest disclosure from their staff member and if they receive one, they must take the appropriate action under the [Public Interest Disclosures Act 2022](#) (NSW) (see the NSW Health Policy Directive *Public Interest Disclosures [PD2023_026]*).

A public interest disclosure is a report of serious wrongdoing within the NSW Health Service (whether or not the wrongdoing occurred) and includes an:

- allegation of the serious wrongdoing, or
- indication of serious wrongdoing.

A serious wrongdoing is defined as one or more of the following:

- corrupt conduct
- a government information contravention
- serious maladministration
- a privacy contravention
- serious and substantial waste of public money.

All staff members who have other staff members report directly (and indirectly) to them have a responsibility for encouraging staff to report known or suspected wrongdoing within a NSW Health organisation, and to provide support for those staff when they make, or are suspected of making, a disclosure. Refer to NSW Health Policy Directive *Public Interest Disclosures (PD2023_026)* for details.

3.9. Additional considerations for initial review of child related allegations, charges and convictions

If the matter is not a child related allegation, charge or conviction, go directly to [Section 4, Advising the staff member against whom the allegations is made](#).

[Information Sheet 10: Additional Considerations for Initial Review of Child Related Allegations](#) provides more detail for conducting an initial review of child related allegations, charges and convictions such as:

- identifying child related allegations

- seeking additional information for initial review
- sharing information between NSW Health organisations
- responsibilities towards the reported victim
- planning contact with the reported victim and/or their family
- advice to be provided to the reported victim and their family
- deciding whether a child needs to be interviewed
- allegations received through the National Redress Scheme.

3.9.1. Paramount consideration for child related allegations

Under the [Children's Guardian Act 2019](#) (NSW), when managing child related matters, the safety, welfare and wellbeing of children, including protecting children from child abuse, must be the paramount consideration in decision making.

3.9.2. Initial response to child related allegations

The NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* ([PD2013_007](#)) has procedures on how to respond to disclosures of child wellbeing concerns or abuse. The first step is to identify and address any immediate risk to a child or young person. Where possible and appropriate the child and family should be involved in any decisions relating to the child's immediate or ongoing safety.

If the matter is captured under the Reportable Conduct Scheme, a notification must be made to the Office of the Children's Guardian within 7 days of the allegation being received. This notification is a requirement under the [Children's Guardian Act 2019](#) (NSW) and is made based on the allegation/s, prior to the allegations being assessed.

3.9.3. Identifying child related allegations

An allegation, charge or conviction is child related if:

- the description indicates it may be Reportable Conduct as defined under the *Children's Guardian Act 2019* (NSW)
- the reported victim was under the age of 18 years at the time of the alleged behaviour or incident (irrespective of the age of the victim at the time of the disclosure), and
- it is against a NSW Health staff member to whom this policy applies.

Most child related allegations, charges and convictions against current NSW Health staff are captured in the NSW Reportable Conduct Scheme and the requirements under the [Children's Guardian Act 2019](#) (NSW) (see [Information Sheet 8: Reportable Conduct](#) for further information). Under this scheme NSW Health has obligations to conduct investigations for reportable allegations, provide advice and final notification to the Office of the Children's Guardian of the findings of the investigation, notify affected parties of the outcome, and keep records for Reportable Conduct.

Where a child related allegation, charge or conviction does not fall under the Reportable Conduct Scheme, notifications to the Children's Guardian are not required, but other

mandatory notifications may still apply (such as the NSW Police, Child Protection Helpline, Australian Health Practitioner Regulation Agency, as appropriate).

3.9.4. Seeking additional information for initial review of child related allegations

Where the initial information received is too vague or non-specific to allow for its assessment and/or management, the NSW Health organisation must attempt to make additional enquiries to clarify the allegation, charge or conviction (see [Information Sheet 10: Additional Considerations for Initial Review of Child Related Allegations](#) for further information).

3.9.5. Child related allegations against staff member who no longer works in NSW Health

If a NSW Health organisation receives information about an allegation, charge or conviction involving child related conduct within NSW Health by a former NSW Health staff member, the relevant Chief Executive (or the Secretary, NSW Health if the person was formerly engaged by the Ministry of Health) must be notified.

The Reportable Conduct Scheme does not extend to former staff members, and no investigation by the NSW Health organisation is required. However, any other relevant mandatory reports must be completed, as appropriate. These may include the Child Protection Helpline if there is a suspected risk of significant harm to a child or class of children (for example, if it is known or likely that the person is currently in child related employment), and/or the NSW Police in the case of a criminal allegation.

The NSW Health organisation must also offer support to the alleged victim, as appropriate, including in reporting the matter to NSW Police or to any other external oversight or investigative agency.

Depending on the level of information available, the NSW Health organisation must also review the circumstances of the alleged conduct with a focus on ensuring the ongoing safety of children in its care. Refer to the NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* ([PD2013_007](#)) for further advice.

3.9.6. Child related allegations arising from clinical procedures

NSW Health organisations must manage child related allegations arising out of clinical procedures in line with this Policy, and must assess whether they meet the threshold for the Reportable Conduct Scheme.

To assist in determining whether the allegation meets the definition of a child related allegation, an appropriately qualified and independent clinician may need to review whether the conduct was reasonable for the purpose of the discipline, management or care of the child, having regard to their age, maturity, health or other characteristics and to any relevant code of conduct or professional standard.

The Chief Executive or an appropriately delegated person must have approved any decision that the allegation does not meet the definition of Reportable Conduct or fall within the scope of Reportable Conduct Scheme under the [Children's Guardian Act 2019](#) (NSW) and does not need to be managed under this section.

3.9.7. Child related allegations related to domestic and family violence

Where a child or young person is suspected to be at risk of significant harm as a result of domestic and family violence, and the alleged perpetrator is a NSW Health staff member, the allegation must be assessed in line with this Policy.

NSW Health organisations must exercise particular care where such information is obtained through Safety Action Meetings (SAMs). Victims referred to SAMs have been assessed as being at serious domestic violence threat, and therefore it is of utmost importance that the NSW Health organisation does not alert the alleged perpetrator to the information they have received.

The relevant NSW Health organisation must, in consultation with their Senior Manager, Violence, Abuse and Neglect (VAN):

- Plan how to respond to the needs of the victim(s), including fulfilling reporting responsibilities, consistent with NSW Health Policy Directive *Domestic Violence – Identifying and Responding* ([PD2006_084](#)).

Where the allegation was identified at a SAM this planning must occur in consultation with other SAM members. Refer to the [Safety Action Meeting Manual](#) for further information.

- Liaise with the NSW Health organisation's Information Manager to safeguard against the potential inappropriate use or disclosure of the medical records of the victim(s).

If the conduct falls within the scope of the Reportable Conduct Scheme, the employing NSW Health organisation must make an initial notification to the Office of the Children's Guardian. The notification must clearly note the potential increased risk to the victim and their children that could be posed by the usual investigative or other management processes, and the related procedural fairness requirements.

Before taking any further action, the employing NSW Health organisation must consult the Office of the Children's Guardian directly about the next steps. In some instances, the Office of the Children's Guardian may exempt the NSW Health organisation from investigating a reportable allegation.

When sharing information within and between NSW Health organisations, care must be taken not to share victims' personal or health information which is not relevant or which may jeopardise a person's life and safety. Decisions on what information to share are to be made in consultation with the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager and/or the NSW Health Child Wellbeing Unit. The provision of such information must be accompanied by a statement, consistent with Part 13A of the [Crimes \(Domestic and Personal Violence\) Act 2007](#) (NSW) and the [NSW Government's Domestic Violence Information Sharing Protocol](#), that information shared at SAMs and actions pertaining to victims (including children) must never be shared with the alleged perpetrator.

3.9.8. Allegations received through the National Redress Scheme

Child related allegations may arise through a request for information or child safe report from the Australian Government's [National Redress Scheme](#) for people who have experienced institutional child sexual abuse. The request may name an alleged perpetrator.

If the alleged perpetrator is a staff member of the NSW Health organisation, the allegation must be managed and investigated in line with this Policy, including making any relevant mandatory notifications.

For further information about the [National Redress Scheme](#) visit the website. For further detail about responding to child related allegations identified via the National Redress Scheme see [Information Sheet 10: Child related allegations, charges and convictions](#).

3.9.9. Allegations involving child abuse material

Where an allegation involves production, distribution or possession of child abuse material, the NSW Health organisation must contact the NSW Police immediately and seek advice before initiating an internal investigation or alerting the staff member. If the alleged use involves a NSW Health device, it must be quarantined without warning so that there is no opportunity for files to be deleted, or the computer to be switched off or on, or other evidence to be tampered with. The NSW Health organisation must take special care to ensure that:

- any alleged child abuse material is not unnecessarily transmitted or disseminated within the NSW Health organisation
- the material is contained
- only a limited number of nominated senior staff members are involved in any investigation
- the process for making any decisions or assessment of the material is clearly documented as part of the investigation.

As part of its response to the allegation, the NSW Health organisation must audit the staff member's use of NSW Health devices, subject to identifying any potential risks to the investigation. The NSW Health organisation must be guided by the NSW Police in classifying material as child abuse material.

3.9.10. The child in relation to a child related allegation is now an adult

If there is a child related allegation against a NSW Health staff member, it must be managed regardless of the current age of the victim. Although a victim may now be an adult, the allegation may relate to a NSW Health staff member who remains in child related employment and/or has current access to children, which could mean that a class of children are at risk.

Refer to NSW Health Policy Directives *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* ([PD2013_007](#)) and *Responding to Sexual Assault (adult and child) Policy and Procedures* ([PD2020_006](#)) for further information on managing disclosures from adults.

4. Advising the staff member against whom the complaint is made

When a decision is made that the staff member will be informed about the complaint or concern about them, this must be done when it is deemed safe and appropriate to do so. As far as practicable they must be kept up to date with the progress and status of the complaint against them. They must be told about the nature of the complaint and any investigation or review process to be followed and encouraged to access support services, such as the Employee Assistance Program, their treating practitioner, or another mental health and wellbeing support service. Any verbal advice must be confirmed in writing.

If detailed allegations cannot be given at this time, the staff member should be provided with details as to how and when that will occur. On occasions numerous allegations can be made against a respondent which can be distressing; it may be appropriate to provide the allegations after they have been vetted.

Factors that will influence the timing of initial advice to the staff member include:

- Whether immediate risk management action is required that makes it necessary to advise the staff member at the time of the action.
- Whether the complaint or concern involves alleged or potential criminal conduct (such as a sexual assault) or a child protection matter, and if a notification to the Child Protection Helpline or the NSW Police needs to be done first.
- Any particular risks, or other information suggesting the timing of the advice needs to be delayed. For example, a statement has not been obtained from the affected patient or alleged victim, the complaint or concern needs further clarification or other potential evidence needs to be protected first.
- A request from an external agency, such as the NSW Police (including the tri-agency Joint Child Protection Response Program), Australian Federal Police, or the Department of Communities and Justice (DCJ), to delay notifying the staff member. If an external agency has requested delaying the advice to the staff member, and there are identified patient safety risks requiring risk management action, this must be conveyed to the external agency, along with a timeframe for when the risk management action needs to start and the associated advice to be provided to the staff member.
- Whether informing the staff member might put the health and safety of another person at risk. In these circumstances advice can be sought from the NSW Health organisation's Violence, Abuse and Neglect (VAN) Manager, District Human Resources/Work Health and Safety unit or the Ministry of Health's Workplace Relations Branch.
- Whether informing the staff member too early might compromise the investigation.

Any decision to delay notifying the staff member should be clearly documented, including reasons for the delay and an expected timeframe for next steps.

See [Information Sheet 7: Providing advice to the staff member of allegations](#) for further guidance on the timing of advice to the staff member.

5. Managing risk

A risk assessment must be undertaken, documented and a risk management strategy put in place if the initial review indicates it is required. The purpose of a risk assessment is not to determine if complaints or concerns are substantiated but to consider any risks requiring ongoing action.

Action taken to manage risk must be specific and proportionate to the risks identified. Where risk management action is necessary, consideration must be given to appropriate and available alternative interim work arrangements. Suspension from duty is a last resort risk management strategy.

Consideration should be given to obtaining the views of the complainant, the respondent, relevant managers or other stakeholders on interim risk measures that can be implemented to ensure the safety of impacted staff during the process. Consultation allows the employer to better understand the risks and issues. [Information Sheet 18: Person Centred Trauma Informed](#) provides further information in taking a person-centred approach to managing concerns about conduct and performance.

[Information Sheet 9: Risk Assessment Template](#) sets out the key factors to be considered in the risk assessment and guidance for deciding on risk management action. This includes considering any risks to past patients as well as current or future patients, activating the NSW Health Policy Directive *Lookback* ([PD2023_003](#)).

Any risk management action (including suspension) must be reviewed whenever new information, relevant to the risk management strategy in place, is received or if no new information is received, then preferably every 30 days. Where the review results in a change in risk management measures, any relevant NSW Health Service Check Register record must also be reviewed and amended as appropriate.

The risk assessment must consider, where relevant:

- How communications to the staff member, affected staff, patients or other parties need to be managed, including the timing of any such communications. For patient safety incidents see NSW Health Policy Directive *Open Disclosure* ([PD2023_034](#)).
- The offer and availability of appropriate support to the staff member and to any affected staff, patients or other parties. Appropriate support includes providing the details of the Employee Assistance Program and/or other support services to the staff member and any affected staff and consideration of any referrals for support for patients or other affected parties.
- The provision of culturally appropriate support for Aboriginal and Torres Strait Islander parties who may be affected.
- A referral to a Sexual Assault Service (SAS), including a choice of referral to a SAS in a different local health district/specialty network to where the perpetrator and/or reported victim is employed, where there is an allegation of sexual assault. It is recommended to consult with the Violence, Abuse and Neglect (VAN) Manager on whether a referral to other NSW Health VAN services may be appropriate for domestic and family violence and child abuse and neglect.

- Any notification requirements (see [Section 7](#)).
- The risk to child(ren) who are the subject of the allegation, other children with whom the staff member may have had or will have contact, and other parties to the child related allegation (such as witnesses, reporters, victims of domestic violence).
- Any risk to the employing NSW Health organisation and the proper investigation of the allegation.
- Any risk to the health and safety of the complainant, the respondent, or other staff, patients or visitors.
- For sexual assault and domestic violence offences, the views of the reported victim and their perception of the risk and what risk management action is needed in the circumstances.

5.1. Advising the staff member about risk management action

If the risk assessment results in a decision to take action (including suspension) that impacts the person subject to the complaint, they must be advised of the decision, the reason for it, for how long the action will apply and that it will be reviewed on a regular basis. Whether this is achieved by providing a full copy, a redacted copy or no copy of the risk assessment should be considered on a case-by-case basis.

Where the action requires an entry to the NSW Health Service Check Register the staff member must be advised of this, in accordance with NSW Health Policy Directive *Service Check Register for NSW Health* ([PD2021_017](#)).

The staff member must be provided with information about support services, any review options, an appropriate contact person and advice about the process that will be followed.

5.2. Requests for review of risk management measures

A staff member who lodges a complaint or who is subject to risk management action may apply in writing for a review of the risk management measures to the case manager or person who conducted the risk assessment, if they believe that:

- the risks have not been identified or assessed appropriately or
- the risks have changed or no longer exist.

5.3. Alternative work arrangements for clinicians

Interim alternative work arrangements for clinicians may include suspending or limiting their rights to provide specific clinical services, procedures or other interventions. Refer to NSW Health Policy Directive *Credentialing & Delineating Clinical Privileges for Senior Medical Practitioners & Senior Dentists* ([PD2019_056](#)).

5.4. Staff members working elsewhere in NSW Health – sharing information

During the processes conducted under this Policy, personal and other information may be collected including for the purpose of assessing and managing risk to the NSW Health system and its participants. In assessing and managing risks, this information may be provided to other relevant NSW Health organisations and persons with responsibility for managing the process and/or outcomes.

If the NSW Health organisation identifies that a staff member, subject of risk management action, is engaged elsewhere in NSW Health, they must advise the relevant other NSW Health organisations if the risk may apply to their other role. This would usually be through the Director of Clinical Governance or Director of Workforce or equivalent and must include sufficient information for the other organisation to conduct a risk assessment and take appropriate risk management action.

The organisation receiving the information must only use it for the purpose it was disclosed, and the information is to be held and treated confidentially and securely by all parties.

5.5. Additional information for risk assessment for child related allegations, charges and convictions

If the matter does not involve a child related allegation, charge or conviction, proceed to [Section 6 Suspension of staff](#).

The risk assessment and management of child related allegations, charges and convictions must include consultation with the local Violence, Abuse and Neglect (VAN) Manager and Child Wellbeing Coordinator or Child Protection Unit, Sexual Assault Services, and/or other service or senior clinical staff, as relevant. This is to ensure that child protection and patient safety issues and/or victim needs are considered and addressed. Where practicable, the child and their family should be involved in any decisions relating to their immediate or ongoing safety.

In all circumstances, the paramount responsibility of the NSW Health organisation is the safety, welfare and wellbeing of children, including protecting children from child abuse. If there are identified risks that need to be managed, the NSW Health organisation must convey this to any relevant external agency (such as NSW Police, Department of Communities and Justice (DCJ), including Joint Child Protection Response Program [JCPRP]) involved in the matter. Where appropriate they must also advise the external agency of when the risk management action will start, and what advice they propose to give to the staff member.

There are additional considerations for risk management of child related allegations, charges and convictions that NSW Health organisations must take into account, including:

- identifying the relevant parties at risk
- responsibilities towards the victims for example, providing support and a referral for appropriate counselling and medical and forensic responses

- planning contact with the victims, potential victims and their family or carers
- the timing and nature of advice to be provided to victims, potential victims and their family or carers.

See [Information Sheet 10: Child related allegations, charges and convictions](#) for detailed information.

6. Suspension of staff

Suspension of a staff member from duty can only occur as a risk management strategy where:

- a risk assessment has been conducted
- a potential risk is posed by the staff member remaining at their current work, and
- the potential risk cannot be appropriately managed in any other way.

Periods of suspension are to be for as short a period as possible and reviewed regularly, ideally as part of the review of the risk assessment. Staff members must be provided with support as appropriate during any period of suspension, including a regular check-in and updates as outlined in [Information Sheet 2: Recommended Timeframes](#).

Where a staff member is suspended, the payment of salary at the applicable ordinary time rate (for example without shift penalties and other allowances) will usually continue.

Section 120A(1) of the [Health Service Act 1997](#) (NSW) sets out circumstances where a staff member can be suspended without pay if the Secretary, NSW Health, or the Chief Executive of the relevant NSW Health organisation (acting under their delegated employer function), so directs. Section 70 of the [Government Sector Employment Act 2013](#) (NSW) sets out the circumstances for suspension (with or without pay) of staff of the Ministry of Health.

Whether suspension is appropriate will depend on:

- whether the staff member can continue to perform the role for which they were employed
- whether alternative interim work arrangements are appropriate, available and can be safely provided without adverse impact on the operational efficiency and budgetary constraints of the NSW Health organisation.

Before progressing on unpaid suspension, a staff member must be allowed to access any paid annual or long service leave entitlements accrued before being suspended. While accessing such leave entitlements, their employment will remain suspended.

For information about the legislative provisions pertaining to suspension without pay and reimbursement of salaries, see [Information Sheet 13: Suspension](#).

6.1. Reimbursement of shift penalties and other allowances

Where a staff member is engaged as a shift worker on a permanent or regular basis, or has undertaken shift work regularly in the previous 3 months, and where:

- the staff member is suspended or allocated alternative duties as a risk management strategy pending the outcome of an investigation and/or decision making process in relation to a misconduct allegation against them, and
- the suspension or alternative duties result in a loss of shift penalties and/or other work-related allowances, and

- no adverse finding is subsequently made against the staff member,

the staff member is to be reimbursed for the loss of shift penalties and/or work related allowances. The reimbursement is based on the average of any shift penalties and/or work related allowances for the preceding 6 months or, if the period of shift work is less than 6 months, the average for the period worked. Expense related allowances are not to be reimbursed.

6.2. Suspension of visiting practitioners

The [Visiting Medical Officer Determinations](#) provide that an organisation may suspend the appointment of a visiting medical officer where it is considered necessary in the interests of the hospital to which the visiting medical officer is appointed. The suspension of any visiting practitioner is without pay.

In addition to any internal review processes section 106 of the [Health Services Act 1997](#) (NSW) provide for a statutory appeal mechanism for visiting practitioners whose appointment is suspended.

7. Notifications

Obligations to notify a complaint or concern about a staff member occur at different stages throughout the process. They should be reviewed at the start and at the end of the process as well as whenever relevant new information is received. There are additional reporting requirements pertaining to clinicians and regarding child related allegations, charges and convictions. Refer to [Information Sheet: 6 Mandatory Notifications](#) for further information about notification requirements.

This Policy is limited to employer notification responsibilities and does not cover mandatory reporting for registered health practitioners to notify Australian Health Practitioner Regulation Agency (Ahpra) of notifiable conduct of other registered health practitioners. Health Practitioners should refer to Ahpra's website for further information about their individual notification responsibilities.

7.1. NSW Health internal notifications

NSW Health organisations must make the following internal notifications:

- To a senior clinical executive, such as a Director of Clinical Governance/their equivalent or delegate, of any complaints or concerns that relate to clinical practice, clinical performance or clinical outcomes specifically where there are concerns about patient safety or consideration of an Ahpra/relevant professional council or Health Care Complaints Commission (HCCC) notification.
- To a senior executive, such as a Director of People and Culture/their equivalent or delegate, of complaints or concerns that involve misconduct specifically where there is consideration of administrative or disciplinary action to manage risks.
- To the relevant Director of People and Culture, or equivalent where a complaint or concern involves an alleged physical or sexual assault by a clinician.
- The NSW Health organisation's Chief Executive or delegate must be notified in the case of high risk or serious matters, as determined by the relevant NSW Health policy directive and informed by local protocols.
- Where the staff member works in another NSW Health organisation, the other employing Chief Executive may also need to be notified.
- The NSW Health Incident Management System as required under the NSW Health Policy Directive *Incident Management* ([PD2020_047](#)).
- The NSW Health Service Check Register for alleged or substantiated misconduct that meets the criteria for creating a record (see the NSW Health Policy Directive *Service Check Register for NSW Health* ([PD2021_017](#))).
- Pharmaceutical Services, NSW Ministry of Health in relation to alleged theft or misappropriation of medication, prescription pads, or alleged drug register tampering, as required by the NSW Health Policy Directive *Medication Handling* ([PD2022_032](#)).

7.2. Reporting conduct to the NSW Police

Staff members who become aware of criminal conduct of other staff which occurs in the workplace or which otherwise affects the staff member's work must notify the matter to the Director of People and Culture/their equivalent or their delegate to assess and action requirements to notify the NSW Police.

For physical assault, NSW Police should be notified, and the alleged victim given appropriate support to make their own notification or complaint to the police, unless there are exceptions as noted in the policy directives listed below.

For reporting physical assault, in the context of domestic violence or sexual assault, to the NSW Police, refer to the following NSW Health Policy Directives and Policy and Procedure Manual:

- *Responding to Sexual Assault (adult and child) Policy and Procedures* ([PD2020_006](#))
- *Sexual Safety - Responsibilities and Minimum Requirements for Mental Health Services* ([PD2013_038](#))
- *Domestic Violence Routine Screening* ([PD2023_009](#))
- *Protecting People and Property: NSW Health Policy and Standards for Security Risk Management in NSW Health Agencies.*

If the NSW Police have been notified, advice to the staff member and other actions (such as interviewing a victim) will usually be delayed until after consultation with the NSW Police and relevant director or equivalent.

The Security Licensing and Enforcement Directorate of the NSW Police are to be notified if a licensed security officer is subject to criminal charges.

Note that under Section 316(1) of the [Crimes Act 1900](#) (NSW) it is an offence not to report a serious indictable offence. A serious indictable offence is one that is punishable by imprisonment for life or for a term of 5 years or more. Note that prosecutions cannot be sought under Sections 316 and 316A of the [Crimes Act 1900](#) (NSW) without the consent of the NSW Director of Public Prosecutions against the professions prescribed in the [Crimes Regulation 2020](#) [NSW] (which includes a medical practitioner, psychologist, nurse, social worker, support worker for victims of crime, and counsellor who treats persons for emotional or psychological conditions suffered by them) if that information was obtained while undertaking their role.

7.3. Additional reporting for health practitioners

Notifiable Conduct - Australian Health Practitioner Regulation Agency (Ahpra)

Ahpra must be notified if the employer has formed a reasonable belief that a registered health practitioner has/is:

- Practised/practising their profession while intoxicated by alcohol or other drugs
- Engaged/engaging in sexual misconduct in connection with the practice of their profession

- placed/placing the public at risk of substantial harm because the practitioner has an impairment
- placed/placing the public at risk of harm by practising in a way that constitutes a significant departure from accepted professional standards

Guidelines developed jointly by the National Boards provide direction for employers about mandatory notifications under the [Health Practitioner Regulation National Law \(NSW\)](#). These guidelines are available on the [National Boards' websites](#).

Professional Councils

Under the [Health Services Act 1997](#) (NSW) the relevant professional council must be notified at any stage that the Chief Executive of a NSW Health organisation suspects on reasonable grounds that the conduct of a staff member who is a registered health professional may constitute professional misconduct or unsatisfactory professional conduct as defined in the [Health Practitioner Regulation National Law \(NSW\)](#).

If a Chief Executive is required to report the same conduct to a health professional council under s.117A or s.99A of the [Health Services Act 1997](#) (NSW) and Ahpra under section 142A of the [Health Practitioner Regulation National Law \(NSW\)](#), compliance with either section of the relevant legislation satisfies the requirements of both sections.

Private Hospitals

Private hospitals where the clinician holds appointments may need to be provided with information. Section 133C of the [Health Services Act 1997](#) (NSW) permits a NSW Health organisation to share or exchange appointment information about a clinician with a private health facility licensee if the NSW Health organisation reasonably believes that the clinician practices at that facility and reasonably considers the disclosure of that information is necessary because it raises concerns about the safety of patients.

Health Care Complaints Commission

Consideration may be given to making a complaint to the Health Care Complaints Commission (HCCC):

- in respect of health practitioners who fall within a self-regulating health profession, if there is an alleged breach of the Code of Conduct for non-registered health practitioners as contained in Schedule 3 of the [Public Health Regulation 2022](#) (NSW).
- in circumstances where the threshold has not been met for a mandatory notification to Ahpra or the relevant professional council, but the NSW Health organisation has concerns about risks to patient health or safety.

See [Information Sheet 6: Mandatory notifications checklists](#) and [Information Sheet 16: Mandatory reporting of registered practitioners](#) for information about the employers' reporting requirements to Ahpra and the relevant professional council.

7.4. Additional reporting for child related allegations, charges and convictions

If the matter is not a child related allegation, charge of conviction, proceed to section 8, *Investigations*.

Child Protection Helpline

All child related allegations, charges and convictions against NSW Health staff members must immediately be reported to the Child Protection Helpline if there is a suspected risk of significant harm relating to a child or a class of children.

The online [Mandatory Reporter Guide](#) or the NSW Health Child Wellbeing Unit will help determine whether the risks meet the threshold for reporting to the Child Protection Helpline. See also NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* ([PD2013_007](#)).

A report to the Child Protection Helpline is to also include information about the person's role in NSW Health and whether they have contact with children, any risk management action planned or taken, and a contact person for consultation and ongoing exchange of information.

The Child Protection Helpline must be advised if a report to NSW Police has also been made.

NSW Health Child Wellbeing Unit

NSW Health organisations may also need to contact the NSW Health Child Wellbeing Unit in order to seek:

- advice and information to clearly identify child protection risks, harm and vulnerabilities
- relevant information held about past or current child protection or wellbeing related concerns recorded by any Child Wellbeing Unit or by the Department of Communities and Justice (DCJ), including the Child Protection Helpline
- advice on interventions, treatments and/or referrals for vulnerable or at-risk children, young people and families
- guidance around how to raise health, safety and wellbeing concerns with parents.

Where required, the NSW Health Child Wellbeing Unit can assist with reporting to the Child Protection Helpline.

NSW Police

There may be an obligation to report child related allegations, charges and convictions against NSW Health staff members to NSW Police if the allegation is about criminal conduct, for example production, dissemination or possession of child abuse material. This includes allegations that may not meet the threshold for a report to the Child Protection Helpline and/or reporting obligations to the Officer of the Children's Guardian. See NSW Health Policy Directive *Responding to Sexual Assault (adult and child) Policy and Procedures* ([PD2020_006](#)).

It is an offence to fail to reduce or remove a risk of a child becoming a victim of child abuse (see Section 43B of the [Crimes Act 1900](#) [NSW]) or to conceal a child abuse offence (see Section 316A of the [Crimes Act 1900](#) [NSW]).

Office of the Children's Guardian

Notification to the Office of the Children's Guardian is required if the allegation/conviction falls under the Reportable Conduct Scheme (see [Information Sheet 8: Reportable Conduct](#)). Note that the [Children's Guardian Act 2019](#) (NSW) has specific reporting time frames that must be adhered to, including a 7 day initial notification and a 30 day interim or final report. The Reportable Conduct Scheme is an allegations based scheme, and there is no discretion not to notify them of matters that meet the definitions of Reportable Conduct.

Other NSW Health organisations

Where the person subject to a child-related allegation works in a different NSW Health organisation from where the alleged Reportable Conduct has been identified, information must immediately be forwarded to the relevant other NSW Health organisation (see [Information Sheet 10: Child related allegations, charges and convictions](#)).

Non-NSW Health organisations

If it is known that the person is also employed in another non-NSW Health organisation, and if that organisation is a 'prescribed body' under Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW) (such as a private health facility within the meaning of the [Private Health Facilities Act 2007](#) [NSW]), information must also be forwarded to that organisation.

This is subject to meeting one of the relevant legislative thresholds, such as information sharing outlined in Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW), or secondary use of information under Schedule 1(10) of the [Health Records and Information Privacy Act 2002](#) (NSW). Further, information relating to the progress, findings or action taken in relation to a reportable conduct investigation may only be disclosed in limited circumstances, described in the [Children's Guardian Act 2019](#) (NSW).

NSW Ministry of Health

The NSW Ministry of Health must be notified within 24-hours via a Reportable Incident Brief (RIB) as required by NSW Health Policy Directive *Incident Management* ([PD2020_047](#)).

7.5. Other Reporting

Reportable incidents in Commonwealth subsidised aged care services

Alleged or suspected complaints involving physical assaults, psychological harm, unlawful sexual contact or inappropriate sexual conduct towards care recipients of Commonwealth subsidised aged care services, are reportable incidents under the [Aged Care Serious Incident Response Scheme](#) (SIRS). These incidents must be reported through the SIRS in accordance with the [Aged Care Quality and Safety Commission SIRS Guidelines](#).

Incidents occurring within Commonwealth subsidised aged care services must be reported to the police within 24 hours of becoming aware of circumstances that lead to a belief that an incident is unlawful or considered to be of a criminal nature regardless of whether the incident is only alleged or suspected to have occurred.

See the NSW Health State [Government Residential Aged Care Facilities and Multipurpose Services: Operational Guidelines](#) for guidance on the reporting requirements in relation to Commonwealth subsidised aged care services.

Reportable incidents under the National Disability Insurance Scheme (NDIS)

An approved NDIS provider has an obligation to report an incident to the NDIS Quality and Safety Commission that includes:

- The death of a person with disability.
- Serious injury of a person with disability.
- Abuse or neglect of a person with disability.
- Unlawful sexual or physical contact with, or assault of, a person with disability.
- Sexual misconduct, committed against, or in the presence of, a person with disability, including grooming of the person with disability for sexual activity.
- Unauthorised use of restrictive practices in relation to a person with disability.

Notifications to the Commission are done via an online portal by submitting an Immediate Notification Form via the [NDIS Commission Portal](#). Notifications must be made within 24 hours of key personnel becoming aware of a reportable incident or allegation, with certain exceptions. See the [NSW Health State Government Residential Aged Care Facilities and Multipurpose Services: Operational Guidelines](#) for details.

Privacy breaches

The Chief Executive must immediately notify the Privacy Commissioner of an eligible data breach, using the Data Breach Notification to the Privacy Commissioner Form available from the NSW Information and Privacy Commission [Mandatory Notification of Data Breach Scheme](#) webpage.

This notification must also be forwarded to the Ministry of Health via MOH-Privacy@health.nsw.gov.au. For further information see NSW Health Policy Directive *Data Breaches Involving Personal or Health Information* ([PD2023_040](#)).

8. Investigations

8.1. The purpose of an investigation

An investigation need only occur following an initial review if the facts of the matter are uncertain and need to be established.

The purpose of an investigation is to determine if:

- The alleged conduct, behaviour or unsatisfactory performance is substantiated.
- The substantiated conduct or unsatisfactory performance breached, or did not meet, expected standards, protocols, relevant policies or legislation.
- Whether there are any extenuating circumstances or contributing factors that may need to be considered (for example, an individual had some special circumstances at the time that warrant consideration or there were system or cultural issues within the facility or service).

An investigation precedes, and is separate from, any final decision by a decision maker about findings and any requirement for further action (disciplinary or other).

Setting a scope or Terms of Reference prior to starting an investigation will assist the NSW Health organisation to establish the focus and set limits on the investigation.

As an investigation progresses, the investigator may discover additional matters of concern. If the investigator seeks to broaden the scope of the investigation they are to liaise with the case manager for approval. If the expanded investigation gives rise to additional allegations, the person subject to any additional allegations must be given a further opportunity to respond to the additional allegations, consistent with the requirements of procedural fairness.

8.1.1. Reportable Conduct investigations

A Reportable Conduct investigation will be required under the [Children's Guardian Act 2019](#) (NSW) if the matter is captured under the Reportable Conduct Scheme, unless an exemption from investigation is granted by the Office of the Children's Guardian. If the matter is being investigated under the Reportable Conduct Scheme, the respondent must be advised of the nature of the investigation and the employer's responsibilities under the [Children's Guardian Act 2019](#) (NSW). Procedural fairness principles apply to Reportable Conduct investigations.

Complaints and concerns involving child related allegations, charges and convictions may constitute misconduct, or Reportable Conduct, or both. If it is both misconduct and Reportable Conduct, it may be practical and appropriate to conduct one investigation and ensure that it meets the needs of the workplace investigation and the Office of the Children's Guardian's requirements for a Reportable Conduct investigation. If this is the case, when the respondent is advised of the complaint against them (in accordance with [Section 4](#) of this Policy) they must also be advised of the dual purpose of the investigation and the employer's responsibilities under the *Children's Guardian Act 2019* (NSW).

8.2. Time frame for investigation

Any investigation or management of a complaint or concern must be completed as expeditiously as reasonably possible whilst still affording procedural fairness. Whilst uncomplicated matters are generally concluded within 12 weeks (60 working days) more complex matters may require an extended time frame. [Information Sheet 2: Recommended Timeframes](#) outlines recommended timeframes for investigation and decision making.

Where the completion of the process is delayed beyond 12 weeks or any timeframe previously advised, key parties should be advised of this in writing and kept updated. Some matters will take longer to finalise for a range of reasons such as:

- complexity of the issues
- number of witnesses/parties involved and their availability
- need to seek external or internal expert advice
- impact of delay on the fairness of the process, or matters arising from the process such as the suspension of the staff member and/or delays in receiving a response
- health or wellbeing of the staff member or witness.

NSW Health organisations are to consider the psychosocial risk that can arise from unnecessary delays, balanced against the operational needs of the organisation, and ensure appropriate communications and supports are in place for any affected parties.

If a matter has been referred to an external investigative or regulatory body, ongoing liaison with that body must occur to coordinate, as appropriate, the timing and conduct of any internal investigation. If an investigation is delayed at the request of an external agency, the NSW Health organisation should advise the parties to the investigation including complainant and respondent.

A referral to Australian Health Practitioner Regulation Agency (Ahpra) and/or action by the Health Care Complaints Commission (HCCC) or a relevant professional council will not usually delay the completion of an internal investigation.

A summary of the investigation process is in [Information Sheet 1: Misconduct Process Summary](#).

8.3. Selecting investigators

Investigators must have suitable skills and experience, including an understanding of the investigation process. They must be able to conduct an investigation in an objective and impartial manner, free from any bias or reasonably perceived bias. Any actual or reasonably perceived conflict of interests must be identified and managed.

In most cases, an investigation can be conducted by someone internal to the NSW Health organisation supported by local human resources, internal audit, clinical governance, or professional conduct and standards units, as necessary.

Where the complaint or concern relates to a clinical incident, clinical practice or issues relating to patient safety, consideration should be given to:

- appointing an investigator who is a senior clinician with expertise in the practice under review as well as a thorough understanding of this Policy, and/or
- clinical input, as part of the investigation, from a suitably qualified and independent senior clinician with recognised specialty in the clinical practice under review. This may be to consider standards and practices in the context of current professional practice and role delineation of clinical services at the facility.

External investigators may be used, for example, where a NSW Health organisation considers that there is no one available within the organisation or elsewhere in NSW Health with the appropriate skills and capacity, or where senior executive staff are involved.

8.4. Providing the staff member with an opportunity to respond to the concerns

Written advice must be provided to the staff member about the allegations that are being investigated in sufficient detail to allow them to provide an informed response.

The person under investigation must be provided with any relevant, credible, and significant evidence that will be relied upon and given a reasonable opportunity to respond. This may take the form of a summary of the substance of the evidence or witness statements, rather than the full documentation. In clinical matters, this may involve providing them with an opportunity to sight relevant clinical documentation.

8.5. Evidence

Evidence that may be used in an investigation to support a finding may include:

- site inspections
- record reviews
- clinical practice or indicator data
- complaints
- performance data
- electronic records
- clinical reviews
- rosters
- other applicable evidence.

This is in addition to interviews or statements from relevant parties, including from alleged victims, patients or their relatives.

Evidence may also include:

- advice from an independent expert with recognised specialty and authority in the area of practice under review

- consideration of whether another individual coming from the same professional group, possessing comparable qualifications and experience would have behaved in the same way in similar circumstances.

Where a complaint or concern indicates there may be commonly affected patients, the 'Lookback' process may need to be triggered (see NSW Health Policy Directive [Lookback \[PD2023_003\]](#)).

8.6. Interviews

Reasonable notice of an interview must be given in writing (usually 48 hours prior to the interview). All persons to be interviewed as part of the investigation must be advised that they may have a support person of their choosing present, and that its content must remain confidential. The support person must not be someone who is a party to the matter and they are bound by confidentiality requirements.

The support person does not represent the person being interviewed or advocate or make representations on their behalf.

An investigator may seek information in a written statement instead of, or in addition to, an interview, although an interview is usually preferable, particularly where additional detail is required or to explore issues in greater detail.

Records of interviews must be taken and kept. Under the [Surveillance Devices Act 2007](#) (NSW) electronic/tape recordings can only be made with the knowledge of all parties to the interview, although it is best practice to obtain consent. Persons interviewed must be provided with or have access to a copy of a summary or record of interview for review and an opportunity to confirm its accuracy (see also [Section 9.7](#) regarding disputes over interview records).

8.6.1. Deciding whether to interview people who have reported assault

Adults who have reported assault (including physical assault, sexual assault, or domestic violence) may be re-traumatised if required to provide multiple interviews. The NSW Health organisation must decide whether sufficient information can be obtained via other sources, for example statements held by NSW Police, Department of Communities and Justice (DCJ), Joint Child Protection Response Program (JCPRP), or another external agency.

Any decision to interview those who have reported a serious assault must be made in conjunction with the Sexual Assault Service or Violence, Abuse and Neglect (VAN) unit, and appropriate supports put in place to support them. This may include the presence of a support person, such as a counsellor, who can supervise the person's wellbeing. Consideration should be given to engaging an investigator with special skills in interviewing victims of assault.

8.6.2. Deciding whether the child needs to be interviewed for child related matters

If the matter is not child related, proceed to [Section 8.7](#) *Concurrent external investigations / criminal proceedings*.

It is not always appropriate or necessary to interview a child who is the subject of a child related allegation. In deciding whether or not to proceed, NSW Health organisations must consider a range of factors as described in [Information Sheet 10: Child related allegations, charges and convictions](#).

A decision to interview a child must be made in consultation with the NSW Health organisation's Senior Manager Violence, Abuse and Neglect (VAN) as well as NSW Police and DCJ as appropriate. In the case of the Sydney Children's Hospitals Network, seek advice from the Head of Department for the relevant Child Protection Unit.

8.7. Concurrent external investigations / criminal proceedings

Where the DCJ, NSW Police, or the JCPRP are undertaking a child protection or criminal investigation or have advised that they may undertake such an investigation, NSW Health organisations must maintain ongoing liaison to ensure that external and internal investigations are coordinated effectively, and that information is exchanged, as required, to assist in the ongoing assessment and management of risk.

NSW Health organisations must also seek information about court proceedings and their outcomes to help manage risks and conduct internal investigations/make findings.

8.7.1. Timing of workplace investigations when there are external proceedings

Child related matters

Irrespective of any action external agencies may take, the relevant NSW Health organisation must conduct an internal investigation into a child related matter (unless the facts are clear, such as when there is a conviction) and make its own findings and decisions about any disciplinary action.

Where an investigation is suspended due to an ongoing criminal investigation, DCJ or court proceeding, and the allegation or charge falls under the Reportable Conduct Scheme, the NSW Health organisation must advise the Office of the Children's Guardian of the suspension and steps being taken to manage risks. In these cases, the NSW Health organisation may seek an extension to the reporting requirements from the Office of the Children's Guardian.

In the case of Reportable Conduct, the Office of the Children's Guardian will require the NSW Health organisation to monitor the outcome of the external proceedings. If the matter is with NSW Police, the Office of the Children's Guardian will generally require the NSW Health organisation to obtain a clearance from NSW police to proceed with a Reportable Conduct investigation.

All matters

NSW Health organisations are to consider whether or not it is appropriate to progress its internal investigation whilst any external investigations and any associated proceedings are underway. In certain circumstances it may be appropriate to complete the employer

investigation and make findings and decisions about disciplinary action while the external criminal investigation and/or court processes are ongoing. Factors that might be considered include:

- risk of contamination of a criminal or other external investigation
- whether the external agency has given clearance to NSW Health conducting its investigation
- the expected length of time for the external investigation
- whether the staff member has entered a guilty plea
- whether a finding can be made on the balance of probabilities
- impact that a delay could have on staff members involved and witnesses' recollections
- whether there is access to all relevant evidence
- unnecessary interviewing of victims
- management of a staff member's right to silence in criminal matters.

If an investigation is delayed, the NSW Health organisation must still complete all relevant notifications and continue to assess and manage the risks based on available information. The staff member should be advised of the delay and the reasons for it.

If the decision is made to progress the investigation, the NSW Health organisation must maintain close liaison with the relevant external agencies, and continually consider and manage the associated risks.

8.7.2. Exchanging information with external agencies for child related matters

Where the DCJ or the NSW Police (including the JCPRP) have involvement in the matter or may have information relevant to the NSW Health organisation's investigation and assessment of potential risk to the workplace, requests for information can be made to each agency in accordance with Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW).

Information requested may include details of the complaint or disclosure (including the name and age of the alleged victim if not already known), records of interviews with the alleged victim or any other relevant parties, and any other relevant information. It may also be necessary to clarify with the NSW Police whether they have closed or suspended their investigation, and what information may be provided to the staff member.

A template letter for requesting information from external agencies is available on the NSW Health Intranet, [Conduct and performance](#).

The NSW Health organisation may also need to provide information to the DCJ or the NSW Police (including the JCPRP) about risk management action it is taking or planning to take, and the nature of any potential risks given the staff member's role in the workplace.

For further information about exchanging information under Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW), refer to NSW Health Policy Directive

Child Wellbeing and Child Protection Policies and Procedures for NSW Health ([PD2013_007](#)) or contact the NSW Health Child Wellbeing Unit.

8.7.3. Seeking information about criminal charges and court proceedings

Where the staff member has been charged or convicted with an offence punishable by imprisonment by 12 months or more, the staff member may be requested to provide the NSW Health organisation with information and any relevant documentation to assist it in making risk management decisions such as:

- the charges against them
- court dates
- how they intend to plead
- any other information that may be relevant to assess the risks.

Where the matter has already been before the courts, the staff member must also provide relevant documentation setting out the court outcome.

Information may also be requested directly from NSW Police, DCJ, and/or the courts.

For child-related allegations, a template letter using Chapter 16A of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW) for requesting information from the courts is available on the NSW Health Intranet, [Conduct and performance](#).

8.7.4. Assessing information obtained from external agencies

After receiving information from external agencies, the NSW Health organisation must:

- review the information provided by the external agency
- identify and make any further enquiries as necessary
- determine what needs to be put to the staff member for a response
- complete its internal investigation (unless the facts are clear)
- make its own findings and decisions about further action. Depending on the assessment of the information and outcomes of other proceedings (such as criminal proceedings), the following actions may be appropriate:
 - In limited circumstances, if the NSW Health organisation is satisfied that the information conclusively demonstrates that the allegation was false and that no further information is required, it may move directly to making a finding.
 - If the charge does not proceed to a conviction or finding of guilt, the NSW Health organisation must still complete its own investigation and make its own findings and, where required, make its own decisions about further action.
 - If an external agency has substantiated an allegation, but there is no criminal conviction, the NSW Health organisation must still make its own findings and decisions about further action.

- If the court proceedings result in a conviction or a finding of guilt without conviction, the NSW Health organisation must get details of the conviction or finding, complete its risk assessment to determine whether any risk management action is needed, and make its own decisions about further action.

In all situations, NSW Health organisations must follow the procedural fairness requirements of this Policy.

9. Issues arising

9.1. Staff member leaves or resigns prior to completion of the process

If a staff member ceases in their position for any reason after the complaint or concern arises, the process must still be completed, including making findings and decisions about any action that would have been taken had the staff member still been in their position.

The process must still be fair to the staff member, including providing them with an opportunity to respond to the concerns, any proposed adverse findings and action that would have been taken had they still been in their role. They must also be advised of any final decisions made in response to the complaint or concern. This also applies to Reportable Conduct investigations.

The NSW Health organisation must still complete any notifications, as required, including to Australian Health Practitioner Regulation Agency (Ahpra)/relevant professional council, and the NSW Health Service Check Register.

9.2. Unreasonable conduct by complainants

Complainants may demonstrate unreasonable persistence, demands or arguments, lack of cooperation, aggression and so on.

Refer to the NSW Ombudsman publication [Managing Unreasonable Conduct by a Complainant](#) for guidance in managing complainants.

Any aggression or threats of violence by staff are to be managed as a breach of the NSW Health Policy Directive *NSW Health Code of Conduct* ([PD2015_049](#)).

9.3. Frivolous, vexatious or misconceived allegations / concerns

If at any point in the process it becomes apparent that a complaint or concern raised about misconduct or serious performance is frivolous, vexatious, misconceived or otherwise lacking in substance:

- the process must stop
- this must be communicated to the decision maker for assessment
- the decision to conclude the process must be recorded with reasons
- if the staff member subject to the allegation or enquiry has already been notified, they must be advised as soon as possible that allegations or concerns were not supported (it may also be appropriate to provide an apology).

If a complainant or witness is a staff member and has been found to have made false or vexatious allegations, this must be separately managed in line with this Policy.

Note that the requisite reports must still be submitted to the Office of the Children's Guardian for Reportable Conduct matters.

9.4. Staff member does not cooperate

All staff members must cooperate in any process to manage potential misconduct.

If a staff member fails or refuses to attend an interview or provide a written statement within the timeframe advised, any reasons for the failure put forward or otherwise identified must be considered, any reasonable accommodation made as required, and the staff member advised of a final date for the interview/written statement.

If the staff member continues to refuse to attend an interview/provide a written response without reasonable grounds, they may be directed in writing to attend an interview or provide a written response by a specific date and advised in writing that a refusal may constitute a breach of the NSW Health Code of Conduct (see NSW Health Policy Directive *NSW Health Code of Conduct* [[PD2015_049](#)]) with potential disciplinary consequences, and/or advised that the investigation will continue in any case and a finding will be made based on available information.

If the staff member attends an interview but fails to provide relevant information sought by the interviewer, they must be advised that the content of the interview will nevertheless be recorded, that the investigation will continue and a decision will be made based on available information. This advice is to be confirmed in writing following the interview.

9.5. Staff member is on approved leave during an investigation

It may be appropriate to recall the person from leave to be interviewed or seek a written response from them where a timely completion of the investigation is necessary.

9.6. Staff member is on sick leave / workers compensation leave during an investigation

Consideration must be given to whether the medical condition of a staff member reasonably prevents them from taking part in an interview or providing a written response.

If the staff member is on workers compensation leave, any return-to-work restrictions in place must be considered.

If the staff member is on sick leave due to a non-work related injury or illness, the NSW Health organisation is to rely on the available medical advice from the staff member's treating doctor in the first instance to determine the staff member's ability to participate in the investigation.

Where there are ongoing concerns or a lack of clarity over the staff member's injury or illness, action may include seeking the staff member's consent to discuss their injury or illness with their treating doctor, or referring them for a further medical assessment (see Premier's Memorandum M2010-18 [Procedures for Managing Non-Work Related Injuries or Health Conditions](#) for managing non work related injuries).

If the staff member is not able to attend an interview, but is able to provide, or arrange for the provision of, a written response, this should be formally sought on the basis that a timely completion of the investigation is necessary. In these circumstances, the staff member must be advised of the deadline for the provision of the written response, that the investigation will continue in any case, and a decision will be made based on available information.

9.7. Disputes over interview records

Any issues about the content of the record of interview are to be discussed and resolved if possible, and the record altered to reflect any agreed changes.

If the issues cannot be resolved, the interviewee is to be asked to submit a statement giving reasons for not signing the record, the investigator must record reasons for not agreeing to the requested changes, and both statements must be appended to the interview record.

9.8. Complaints about the investigation / investigator

Complaints about the investigation or the investigator are to be referred for review to the case manager or decision maker and assessed without delay to ensure continued integrity of the process.

9.9. NSW Police do not lay charges or court finds person not guilty

The NSW Health organisation must make its own findings and decisions about any further action. If it is proposed to make an adverse finding, the respondent must be afforded procedural fairness.

There are many reasons why matters do not proceed to charges or to a conviction. In criminal proceedings, the standard of proof required is 'beyond reasonable doubt', whereas in civil matters, the standard is the 'balance of probabilities'. Therefore, regardless of the outcome of the criminal investigation or proceedings, an allegation may still result in a sustained finding of Reportable Conduct and/or misconduct when assessed at the civil, not criminal, standard.

9.10. Allegation is retracted, the complaint withdrawn, or the alleged victim wants no action taken

The NSW Health organisation is still required to follow this Policy if the NSW Health organisation deems the matter is serious, affects the organisation's duty of care or falls within the Reportable Conduct Scheme.

Retractions must not be interpreted as indicating the incident(s) did not happen. Whether or not another external agency remains involved, the NSW Health organisation must seek information to understand the reasons for the retraction and consider this when assessing risk, and when considering evidence to make a finding.

Where the reasons relate to concerns around personal safety, the NSW Health organisation needs to explore the different options for addressing those concerns with the person, including the involvement of NSW Police if relevant.

10. Making Findings

Following enquiries or an investigation, the NSW Health organisation must make findings about whether:

- any aspects of the alleged conduct, performance or behaviour are substantiated.
- any substantiated conduct, performance or behaviour constitutes misconduct, unsatisfactory performance or something else.

Findings may be required for an external agency (such as, the Office of the Children’s Guardian or Independent Commission Against Corruption) and any associated reporting requirements must be made.

For further information on making findings, refer to [Information Sheet 11: Investigation Report Template](#).

10.1. Standard of proof

In deciding whether the alleged conduct, performance or behaviour occurred, genuine and careful consideration needs to be given to the available material and information gathered.

Any adverse finding to be made against a staff member through this deliberative process must be to the civil standard, that is, “on the balance of probabilities”. Based on available material and information, it must be more probable than not that the misconduct or unsatisfactory performance occurred.

In reaching a finding of satisfaction that an act occurred or not, information should be assessed in terms of its relevance to the alleged conduct or performance issue, its reliability, its consistency (over time, with other evidence, if it is more or less plausible) and its strength including whether it is corroborated or contradicted by other information. The weighting given to information should be documented as part of the investigation report. Where clarification is required, more information should be gathered.

Furthermore, in reaching a finding of satisfaction about the allegations, the decision maker should consider the seriousness of the conduct or unsatisfactory performance, and how serious the consequences may be for the staff member.

Findings of Reportable Conduct for the Office of the Children’s Guardian must also be proved to the civil standard.

10.2. Options for findings

The type of finding for each allegation will depend on the nature of the issue under review or investigation and the relevant NSW Health policy:

For alleged misconduct, the findings arising from an investigation or, in appropriate circumstances an initial review, will be one of the following:

- misconduct is substantiated
- misconduct is not substantiated (evidence that it did not occur)
- misconduct is not substantiated due to insufficient or inconclusive information.

For performance issues, the findings will relate to whether the staff member's performance, in relation to the issues under investigation, was unsatisfactory and/or identified potential gaps in their performance.

The NSW Health organisation is to consider for clinicians whether the findings could be possible unsatisfactory professional conduct, professional misconduct or notifiable conduct (including where underlying mental health issues, drug or alcohol dependency that may be related to, or have contributed to, the conduct are identified) to be notified to Ahpra or the relevant professional council (see [Section 7](#) and [Information Sheet 16: Mandatory reporting of registered practitioners](#)).

The NSW Health organisation is to consider whether there are any mitigating practice or system issues and if they need to be addressed to minimise the risk of the conduct or practice occurring again and whether there are any aggravating or mitigating factors.

10.2.1. Findings for child related allegations, charges and convictions

For child related allegations, charges or convictions that are captured in the Reportable Conduct Scheme, a finding in relation to Reportable Conduct must be made. In some instances, a finding of misconduct may be made even if a finding of Reportable Conduct is not made and vice versa. For further information about making findings for the Office of the Children's Guardian, see [Information Sheet 8: Reportable Conduct](#).

10.3. Investigation findings and report

Following an investigation or other inquiries, a report must be given to the decision maker with findings and the facts supporting them (see [Information Sheet 11: Investigation Report Template](#)), containing only information relevant to the conduct or performance under investigation or review.

Where new allegations arise during an investigation, these must be assessed. Allegations or concerns not closely related to the investigation, or any counter-allegations, must be considered separately.

Where appropriate, the report may include any material which may set out mitigating factors or otherwise excuse or partially excuse the conduct of the staff member subject to the investigation.

All supporting documentation and evidence relied on must be available to be examined by the decision maker.

10.4. The role of the decision maker

The decision maker should not have any conflict of interest or bias involving the complaint or concern. They must act in an objective and impartial manner and have regard to procedural fairness and risk management. The decision maker is a separate role from the investigator.

It is the role of the decision maker to accept or reject findings arising from the investigation, or the initial review. The decision maker may accept some but not all of the findings. Any decision to reject a finding, and the reason for it, must be documented. It is also open to the decision maker to ask that the person or persons who conducted the investigation make

further enquiries, or otherwise to initiate or undertake further enquiries, where they are concerned that more information is needed to support findings. The decision maker will also:

- Decide on action the NSW Health organisation is to take in response to the findings.
- Seek a response from the staff member before finalising adverse findings or a decision about disciplinary action.
- Ensure the staff member is advised at the earliest opportunity of a non-substantiated finding.

10.5. Seeking a response from the staff member to proposed adverse findings and proposed action

An adverse finding is one that is unfavourable to the staff member. Adverse findings do not include inconclusive findings.

Where the decision maker is proposing to support an adverse finding against a staff member, the staff member must be advised and provided with an opportunity to raise any concerns about the process or the proposed findings. This is even if the staff member has since left the NSW Health organisation.

The staff member has a right to be provided with the basis for the decision maker's proposed adverse findings. This may include providing access to relevant information although it need not include all information in the possession of the decision maker, particularly where the material is not relevant to the findings or the interests of other members of staff, clinicians, patients or other parties need to be protected.

In certain circumstances (such as public interest disclosures, in respect of confidential information about third parties, or where there may be a potential risk to the wellbeing of the staff member or others) it may be appropriate to withhold some information. What information is withheld and for what reason should be recorded.

The staff member must be given a reasonable time period to respond (usually 2 calendar weeks unless otherwise agreed).

Where the staff member's response provides additional information that has not been raised before and may materially affect the findings, the findings may be reviewed accordingly. In some instances further investigative action may need to take place.

The staff member must also be provided with an opportunity to make submissions about any proposed disciplinary action, change to scope of practice or proposed relocation. This response can be sought at the same time as the response to proposed adverse findings (after considering what may be appropriate action in line with [Section 11](#)). See [Section 11.2](#) for further detail about seeking a response from the staff member about proposed action to be taken

11. Making decisions about action to be taken

11.1. Considering an appropriate response to findings

The decision maker must form a view of the appropriate action based on the material available. This must be completed even if the staff member has since left the organisation. Factors for the decision maker to consider when deciding what action is appropriate includes:

- As the paramount consideration, the protection of a NSW Health organisation's patients and clients and of children for whom it is responsible. In particular, Section 119 of the [Health Services Act 1997](#) (NSW) specifies this as the paramount consideration in relation to determining whether to take disciplinary action against a member of staff in respect of serious sex or violence offences.
- When managing child related matters, the safety, welfare and wellbeing of children, including protecting children from child abuse, must be the paramount concern in all actions and decisions.
- The health, safety and wellbeing of NSW Health staff.
- The seriousness of the conduct or performance, including whether there was any harm or injury caused, or potential for harm or injury. Consideration of whether it was a pattern of behaviour or an isolated incident.
- If appropriate, whether another individual coming from the same professional group, possessing comparable qualifications and experience may have behaved in the same way in similar circumstances.
- The extent to which it constitutes a breach of the NSW Health Code of Conduct (see NSW Health Policy Directive *NSW Health Code of Conduct* [[PD2015_049](#)]), any other NSW Health policy, any relevant legislation, registration standards or codes of practice.
- Any penalties or restrictions prescribed by legislation or relevant policy directives (such as NSW Health Policy Directive *Infection Prevention and Control in Healthcare Settings* ([PD2023_025](#)) and NSW Health Policy Directive *Communications - Use & Management of Misuse of NSW Health Communications Systems* [[PD2009_076](#)]).
- Any action taken by external regulatory bodies in relation to the staff member.
- The staff member's length of service and previous work history, including the period of time since any similar previous conduct or performance issues. Note that:
 - the NSW Health organisation should check the NSW Health Service Check Register for any previously substantiated misconduct matters
 - ordinarily, previous substantiated conduct is not a consideration when making findings about whether the current conduct occurred although it may be relevant when considering the appropriate disciplinary action
 - information about similar previous substantiated conduct may be used to help determine what action should be taken in respect to the current substantiated conduct

- the relevance of previous substantiated conduct will depend on not only its similarity but other factors such as how serious and how recent it was and what action was taken in response.
- Any factors affecting the staff member's behaviour. Where information obtained during the initial review or investigation suggests an underlying health issue may have caused or contributed to the conduct, it may be appropriate to refer the staff member to a medical assessment. For further information, refer to the current NSW public sector procedures for managing non-work related injuries and health conditions (see Premier's Memorandum M2010-18 [Procedures for Managing Non-Work Related Injuries or Health Conditions](#)).

Note also that employers have statutory notification requirements in relation to potential impairment of a health practitioner under the [Health Practitioner Regulation National Law \(NSW\)](#).

- Any matters raised by the staff member about the findings or about the penalty or action that should be taken into account.
- The impact of the conduct on the organisation and other staff.
- Whether it is appropriate to consult the impacted staff members regarding the safety measures moving forwards from the investigation outcome.
- Any other mitigating or aggravating circumstances, such as workplace cultural issues or identified contributory systemic issues or practices.
- The potential impact that any action may have on the staff member's personal circumstances and professional reputation.

11.2. Seeking a response from the staff member about proposed disciplinary or remedial action

Prior to a decision being made the staff member must be provided with an opportunity to respond to any proposed disciplinary action, a proposal to change a clinician's scope of practice or a proposed relocation. For proposed disciplinary actions, this is required even if they have already left the organisation.

The response to proposed action may be sought at the same time as the response to proposed adverse findings. However, where the staff member's response affects the findings, the proposed action will need to be reviewed accordingly, and it may be appropriate to give the staff member an opportunity to respond to any revised proposed action.

A reasonable period of time (usually two calendar weeks unless otherwise agreed) must be allowed for response. Any such response must be considered by the decision maker before a final decision is made about the action to be taken.

11.3. Options for action in response to substantiated findings

The following options exist for a decision maker following substantiated concerns about a staff member (see [Information Sheet 12: Actions in response to findings](#)).

11.3.1. No further action is warranted

Reasons for taking no further action may include:

- The conduct or performance did not seriously breach or fall below expected standards.
- There are mitigating circumstances.
- Low level impairment has been identified but it does not present a risk or is a low risk to patient safety and does not affect the staff member's ability to perform the inherent requirements of their role and/or is being, or has been, addressed or appropriately managed by the staff member.

11.3.2. Remedial (managerial) action

Reasons for remedial action may include:

- While findings of misconduct or unsatisfactory performance were made, disciplinary action is not warranted or managerial action is required in conjunction with disciplinary action.
- Only some of the allegations relating to the conduct/performance was substantiated and the substantiated conduct or performance does not meet the threshold for misconduct/unsatisfactory performance, however it still needs to be addressed (such as low-level breach of the NSW Health Code of Conduct, performance issue, behavioural issues, other policy requirements).
- The enquiries have identified that the staff member has impairment. While there are no significant concerns about patient safety, some further action is required to enable the staff member to continue to fulfil the requirements of their role and maintain patient safety.

Examples of remedial action are training and development, monitoring performance, additional supervision, change to scope of practice, counselling or mediation. For more detail and additional options refer to [Information Sheet 12: Actions in response to findings](#).

11.3.3. Disciplinary action

For findings of misconduct or serious performance concerns the following disciplinary actions are available:

- A formal warning, stating the improved standard of conduct, behaviour or performance required within a given timeframe, the possible consequences of failing to reach that standard (such as termination of employment should there not be an improvement), and any help available for the staff member to meet the expectations.

- Termination of employment or engagement of a staff member or decision to terminate or not re-appoint a Visiting Practitioner.
 - Any decision to terminate a NSW Health Service employee's employment must be approved by the Chief Executive, who must be satisfied, as the decision maker, that this action is warranted.
 - Any decision to appoint, retain, terminate or not reappoint a Visiting Practitioner who has been convicted of a serious sex or violence offence must be confirmed by the Secretary, NSW Health or their delegate (refer Section 100 of the [Health Services Act 1997](#) [NSW])
 - Any decision to terminate the employment of a member of the NSW Health Executive Service must be approved by the Secretary, NSW Health.
 - Any decision to terminate the employment of an employee of the Ministry of Health must be approved in accordance with Ministry of Health delegations.

For staff of the Ambulance Service of NSW only also refer to the [Health Services Regulation 2018](#) (NSW).

Note also that specific provisions exist under the [Health Services Act 1997](#) (NSW) in relation to a member of staff (Section 118) or a Visiting Practitioner (Section 100) who has been convicted of a serious sex or violence offence.

11.3.4. For findings of unsatisfactory performance of employees

Subject to being consistent with and having met the requirements in Rule 36 of the [Government Sector Employment \(General\) Rules 2014](#) (NSW), Section 68 of the [Government Sector Employment Act 2013](#) (NSW), provides for termination (after giving the employee the opportunity to resign), reduction in remuneration payable to employee or classification or grade of employee (refer to [Information Sheet 17: Dealing with Unsatisfactory Performance](#)).

11.3.5. Addressing systems / organisational issues

The NSW Health organisation may seek opportunities to make system or cultural improvements, following an investigation. This may be appropriate even where allegations have not been substantiated.

For further information on options for action following findings, refer to [Information Sheet 12: Actions in response to findings](#).

11.3.6. For staff of the Ministry of Health

Additional provisions are available for the Ministry of Health for actions that may be taken in response to a finding of misconduct. Refer to Part 5, Section 69(4) of the [Government Sector Employment Act 2013](#) (NSW), and Part 8, Section 40 of the [Government Sector Employment \(General\) Rules 2014](#) (NSW) for further information.

12. Implementing Decisions and Finalising the Process

12.1. Advising the staff member of the final findings and decisions

The staff member must be advised in writing of any final findings and decision about disciplinary or remedial action or any other outcome of the process in relation to them, including the effective date. This includes action the NSW Health organisation would have taken if the staff member was still in their role (if they have left). Advice must include the effect of the final decision on the service check register (if relevant).

Advice to the staff member should generally also include information about any notifications about the staff member to external regulatory or oversight bodies and any internal review or appeal mechanisms.

Where a staff member is required to continue with or resume their role in the organisation, there must be a discussion with them about any support needed.

12.1.1. Advising the staff member of final outcomes for child related matters

For child related matters, the advice to the staff member must include any relevant consequences such as, if applicable, that the Office of the Children's Guardian will refer any sustained finding of sexual offence, sexual misconduct or serious physical assault to its Working With Children Check Unit.

12.2. Advising other parties of the outcome

Having regard to confidentiality issues, complainants should be told the outcome of the process (which may include the findings and steps being proposed to be taken to address concerns raised) in so far as it relates to them. For further information, refer to the NSW Health Policy Directives *Open Disclosure* ([PD2023_034](#)) and *Complaints Management* ([PD2020_013](#)).

Where a person cannot be told of the outcome of the process or feedback provided, an explanation of why it is not appropriate to comment on a specific matter(s) should be given. It is usually not appropriate to tell other persons about any disciplinary action taken against a staff member.

As to others involved in the process, consideration should be given to the need to provide appropriate feedback, including to provide learnings and any necessary reassurance that action has been taken to address concerns raised.

Consistent with this Policy, complainants and or others advised of the outcome are expected to maintain appropriate confidentiality over matters, including so as to not impact future workplace cohesion and relationships. Spreading rumours or gossiping about investigations

and outcomes is not appropriate and could be regarded as a breach of confidentiality and investigated in accordance with this Policy.

It may be necessary to offer support (such as the Employee Assistance Program) to all staff members involved in the process, in particular the complainant and respondent, as well as considering any referral for support services, as appropriate, for any other affected persons, such as patients, alleged victims or families of patients.

For matters within the scope of the Reportable Conduct Scheme, specific requirements apply in relation to the child and their family/carer (see [Information Sheet 8: Reportable Conduct](#)).

12.3. Notifying the Australian Health Practitioner Regulation Agency

If the staff member is a registered health practitioner, the NSW Health organisation must identify any further requirements to notify Australian Health Practitioner Regulation Agency (Ahpra). Mandatory notifications apply when the Chief Executive has formed a reasonable belief that the practitioner has behaved in a way that constitutes 'notifiable conduct' under the [Health Practitioner Regulation National Law \(NSW\)](#).

Refer also to [Information Sheet 16: Mandatory reporting of registered practitioners](#).

12.4. Final notification to the Office of the Children's Guardian

For matters under the Reportable Conduct Scheme, the NSW Health organisation must submit an entity report to the Office of the Children's Guardian once it has finalised the investigation or other management action and made findings (including those related to convictions) and final decisions about action (or a decision to take no action). See [Information Sheet 8: Reportable Conduct](#).

12.5. Visiting practitioner appeals

Visiting Practitioners have a right of appeal regarding certain decisions against them. These are detailed in Chapter 8, Part 4 of the [Health Services Act 1997](#) (NSW). Further advice can be sought from each NSW Health organisation's medical administration.

12.6. Action arising from termination of employment or appointment

Where a staff member's employment is terminated in one part of NSW Health, the termination, subject to a show cause process, will apply to any other employment across NSW Health.

The NSW Health organisation must notify other NSW Health organisations where the staff member is engaged of the termination and the reasons for it. A process is available to the staff member to 'show cause' as to why the termination should not apply to their other

employment in the NSW Health Service. The process is outlined in [Information Sheet 14: Show cause process checklist](#), including advice to be provided to the staff member.

Any decision made by the other NSW Health organisation following a show cause application must be endorsed by the Ministry of Health's Executive Director, Workplace Relations before implementation.

Where a visiting practitioner's appointment with one NSW Health organisation is terminated following a complaint or concern, any other NSW Health organisations where the Visiting Practitioner holds an appointment must be advised of the termination to allow them to assess and manage any risks arising from the findings of the other organisation.

For misconduct, refer to the NSW Health Policy Directive *Service Check Register for NSW Health* ([PD2021_017](#)).

12.7. Record Keeping

Appropriate and sufficiently adequate records of all stages of the process (including the initial review and any interviews), all communication with the staff member and outcomes must be kept.

Documentation relating to misconduct matters must be kept on a dedicated and confidential file, separate to a staff member's personnel file. Where a finding of misconduct or unsatisfactory performance was made, a note is to be placed on the personnel file as an alert, containing key information (see [Information Sheet 15: Record keeping checklist](#) for details).

Documentation must also be maintained and managed in line with NSW State Records requirements for keeping personnel records (see the NSW State Records *General Retention and Disposal Authority: Administrative Records* [[GA28](#)]).

For the Ministry of Health, certain information must be kept in the personnel file in accordance with Section 41 of the [Government Sector Employment \(General\) Rules 2014](#) (NSW).

For details refer to [Information Sheet 15: Record keeping checklist](#).

Note there are additional record keeping requirements for Reportable Conduct matters, see [Information Sheet 8: Reportable Conduct](#).

12.8. Finalising the process

Review and complete any final notifications (refer to [Section 7](#)).

Complete any actions required as part of finalising open disclosures, refer to the NSW Health Policy Directive *Open Disclosure* ([PD2023_034](#)).

As part of finalising a complaint or concern, a final review must be undertaken to identify any issues requiring ongoing management or action, specifically around any local or state-wide patient safety improvements to practices or processes that may assist in preventing a reoccurrence locally or elsewhere in the NSW Health system.

NSW Health organisations are to have systems in place to identify any such issues, to report on them and to ensure, where appropriate, that relevant information is shared.

Remedial or disciplinary action that has been taken is to be monitored to ensure it remains effective. NSW Health organisations should consider the need for any audit and/or monitoring, for example at 3, 6 and 12 months (if required) after the matter is finalised.

If workplace relationships have been impacted by the matter, the employing organisation must make an effort to restore workplace harmony. This may include, for example, facilitated discussions between staff members, a culture review, or restorative justice programs.