



Guidelines:

Mandatory notifications about
registered health practitioners

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Contents

Executive summary	2
1. Mandatory notification requirements	4
1.1 What do these guidelines cover?	4
1.2 What do these guidelines not cover?	4
1.3 Who should make a mandatory notification?	4
1.4 How do I make a notification?	5
1.5 How does the National Law protect notifiers?	6
1.6 Who is exempt from notifying?	6
1.7 What about voluntary notifications?	6
2. Concerns to report	7
2.1 What concerns must be reported?	7
2.2 What is 'reasonable belief'?	7
2.3 What is impairment?	8
2.4 What is intoxication while practising?	8
2.5 What is a significant departure from accepted professional standards?	8
2.6 What is sexual misconduct?	9
3. Notifications by treating practitioners	10
3.1 What are my obligations?	10
3.2 When must I report impairment?	10
3.3 When must I report intoxication while practising?	13
3.4 When must I report a significant departure from professional standards?	15
3.5 When must I report sexual misconduct?	17
4. Notifications by non-treating practitioners	18
4.1 What are my obligations?	18
4.2 When must I report impairment?	19
4.3 When must I report intoxication while practising?	21
4.4 When must I report a significant departure from professional standards?	22
4.5 When must I report sexual misconduct?	23
5. Notifications by employers of practitioners	24
5.1 What are my obligations?	24
5.2 When must I report impairment?	24
5.3 When must I report intoxication while practising?	27
5.4 When must I report a significant departure from professional standards?	28
5.5 When must I report sexual misconduct?	29
Appendix A: National Law extracts	30

Executive summary

The Australian Health Practitioner Regulation Agency (Ahpra) works in partnership with the National Boards to implement the National Registration and Accreditation Scheme (the National Scheme) and administer the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law)¹.

Ahpra supports the Boards to set standards and policies for registered practitioners. We manage notifications and register practitioners and students. Under the National Law, certain groups must make mandatory notifications about practitioners when their health, conduct or performance poses a risk to the public.

The National Law establishes requirements for mandatory reporting. This guideline has been developed to explain those requirements.

Mandatory notification requirements

To protect the public from the risk of harm, registered health practitioners and their employers must make mandatory notifications in some limited circumstances. This is a legal requirement under the National Law. This document sets out:

- who must make a mandatory notification
- how to do it, and
- how notifiers are legally protected when doing so.

It explains the circumstances that do and do not trigger a mandatory notification and the different levels of risk to be considered by notifiers.

The guidelines recognise that deciding whether to make a mandatory notification can be a difficult decision and requires a balanced judgement which should holistically consider relevant risk factors. The guidelines provide information about who may assist in making this decision (see section 1.4 *How do I make a notification?*).

Concerns to report

Notifiable concerns have a specific meaning under the National Law. There are four concerns that may trigger a mandatory notification, depending on the risk of harm to the public:

- impairment
- intoxication while practising
- significant departure from accepted professional standards, and
- sexual misconduct.

Notifications by treating practitioners

A treating practitioner is a practitioner who becomes aware of the concern while providing treatment to another practitioner.

Treating practitioners in Western Australia providing a health service to a practitioner-patient are exempt from the requirement to make a mandatory notification but may still be obliged to make a notification as a non-treating practitioner (see section 1.6 *Who is exempt from notifying?* and section 4 *Notifications by non-treating practitioners*).

The circumstances for making a mandatory notification about impairment, intoxication and a departure from professional standards are more limited for treating practitioners than other groups of notifiers. The threshold for reporting risk of harm to the public is higher to give practitioners confidence to seek help if they need it (see section 3 *Notifications by treating practitioners*, alongside section 1 *Mandatory notification requirements* and section 2 *Concerns to report*, for more information).

¹ The National Boards developed these guidelines under section 39 of the National Law (see Appendix A).

Notifications by non-treating practitioners

A non-treating practitioner is a practitioner who has a concern about another practitioner (for example, a colleague) but did not identify it while (if) treating that practitioner. The concern cannot have come from being in a treating relationship with the other practitioner.

While non-treating practitioners have to report the same types of concern as treating practitioners, the requirement to notify us is based on a different level of risk (see *section 4 Notifications by non-treating practitioners*, alongside *section 1 Mandatory notification requirements* and *section 2 Concerns to report*, for more information).

Notifications by employers of practitioners

An employer is a person or organisation that employs a practitioner under an employment or service contract or as a volunteer.

While employers have to report the same types of concern as practitioners, the requirement to notify us is based on a specific level of risk (see *section 5 Notifications by employers of practitioners*, alongside *section 1 Mandatory notification requirements* and *section 2 Concerns to report*, for more information).

1. Mandatory notification requirements

These guidelines explain the requirements for making a mandatory notification about a practitioner under the National Law. Making a mandatory notification is a serious step to prevent the public from being placed at risk of harm. A mandatory notification should only be made on sufficient grounds. The guidelines explain when these grounds are likely to arise.

Read this section to understand the reporting requirements, who has to notify us and how to do this.

1.1 What do these guidelines cover?

Under the National Law, certain groups must make mandatory notifications about registered practitioners under some limited circumstances. These guidelines cover:

- who must make a mandatory notification
- how to do it, and
- how notifiers are legally protected when doing so.

If we receive a mandatory notification, the Board will consider all relevant information before deciding if action is needed to protect the public. It will not automatically take regulatory action (such as, for example, a caution).

1.2 What do these guidelines not cover?

These guidelines do not provide detailed information about the notifications process. There are a number of possible stages in the notifications process and not every notification goes through all these stages. For more information about the notification process please see the [Ahpra website](#).

These guidelines do not affect other legal mandatory reporting requirements – for example, about child abuse.

They do not cover when treating practitioners, non-treating practitioners or education providers must report students. For more details on how mandatory notifications relate to students, please read our *Guideline: Mandatory notifications about registered students*.

Under section 130 of the National Law registered health practitioners and students must notify Ahpra of certain relevant events within seven days of those events occurring. These guidelines do not cover those obligations. Information on giving notice of certain relevant events is available on the [Ahpra website](#).

1.3 Who should make a mandatory notification?

The groups who must make mandatory notifications about practitioners are:

- treating practitioners (a practitioner who is treating another practitioner)
- non-treating practitioners, and
- employers of practitioners.

Other people or organisations do not have to make a mandatory notification, but they can consider whether to make a voluntary notification. See *section 1.7 What about voluntary notifications?*

All groups should understand the mandatory notification process and when the four types of concerns must be reported. To understand this, please continue reading this section and *section 2 Concerns to report*.

There are different reporting limits for the different groups who must report a concern. To understand what you should consider before making a mandatory notification, please refer to:

- *section 3: Notifications by treating practitioners*
- *section 4: Notifications by non-treating practitioners, and*
- *section 5: Notifications by employers of practitioners.*

The following table shows the types of concerns that need to be reported, and the different reporting thresholds for different groups.

Types of risks and reporting thresholds for different groups

Impairment	Intoxication	Departure from standards	Sexual misconduct
Treating practitioners must report practitioners who:			
are practising with an impairment, and place the public at substantial risk of harm <i>See page 10</i>	are practising while intoxicated by alcohol or drugs, and place the public at substantial risk of harm. <i>See page 13</i>	are significantly departing from professional standards, and place the public at substantial risk of harm. <i>See page 15</i>	have engaged in, are engaging in or might engage in sexual misconduct connected to their practice. <i>See page 17</i>
Non-treating practitioners must report practitioners who:			
are practising with an impairment, and place the public at risk of substantial harm. <i>See page 19</i>	are practising while intoxicated by alcohol or drugs. <i>See page 21</i>	by significantly departing from professional standards, and place the public at risk of harm. <i>See page 22</i>	engage in sexual misconduct connected to their practice. <i>See page 23</i>
Employers of practitioners must report practitioners who:			
are practising with an impairment, and place the public at risk of substantial harm. <i>See page 24</i>	are practising while intoxicated by alcohol or drugs. <i>See page 27</i>	by significantly departing from professional standards, and place the public at risk of harm. <i>See page 28</i>	engage in sexual misconduct connected to their practice. <i>See page 29</i>

1.4 How do I make a notification?

You can make a mandatory notification to Ahpra. The simplest way is to use the portal on our website, see: www.Ahpra.gov.au/notifications. You can also call us on 1300 419 495 and tell us that you want to make a notification.

Our website also has information about how we handle both mandatory and voluntary notifications. It also explains how to raise a concern if you are in Queensland or New South Wales.

If you are making a mandatory notification and want your identity to be confidential, please let us know. We will endeavour to keep your details confidential. Please see the [Ahpra website](#) for more information about how we manage notifications.

A notification to Ahpra should be made as soon as practicable. In this context, the word 'practicable' has its ordinary meaning of 'feasible' or 'possible'.

We can provide general information to help you decide whether to make a mandatory notification, but we can't tell you whether or not to notify in a specific case. If you are unsure about whether to make a mandatory notification, you may wish to seek advice from your insurer, legal advisor, or professional association on specific circumstances. You can also find more information by:

- visiting our website, see: www.Ahpra.gov.au/notifications, or
- calling us on 1300 419 495.

1.5 How does the National Law protect notifiers?

The National Law protects anyone who makes notifications in good faith. 'Good faith' has its ordinary meaning of being well-intentioned or without malice.

Section 237 of the National Law provides protection from civil, criminal and administrative liability, including defamation, for people making notifications in good faith. However, if you make a notification that is vexatious or not in good faith, you may be subject to regulatory action (such as, for example, a caution).

The National Law clarifies that making a notification is not a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct. It is consistent with professional conduct and a practitioner's ethical responsibilities.

Privacy obligations do not prevent you from making a mandatory or voluntary notification.

1.6 Who is exempt from notifying?

There are exemptions to mandatory notifications for treating and non-treating practitioners where they:

- are employed or engaged by a professional indemnity insurer, and form the belief from a disclosure in the course of a legal proceeding or the provision of legal advice arising from the insurance policy
- form the belief while providing advice about legal proceedings or the preparation of legal advice
- are exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation which prevents disclosure of the information
- reasonably believe that someone else has already made a notification about the same concern.

Treating practitioners in Western Australia providing a health service to a practitioner-patient or student are exempt from the requirement to make a mandatory notification. However, these practitioners still have a professional and ethical obligation to protect and promote public health and safety, so they may consider whether to make a voluntary notification.

Please refer to *Appendix A: National Law extracts* to see if these exemptions apply to you.

You do not need to make a mandatory notification if a practitioner or employer has made a mandatory notification, and safeguards to reduce the risk to the public are being put in place.

An employer may have their own process for mandatory notification obligations. However a practitioner who is an employee might still have to make a mandatory notification about another practitioner. To assess whether the process or circumstances reduce the risk of harm to the public, an employee who is a practitioner may find it helpful to talk to their employer or professional association about the concern.

1.7 What about voluntary notifications?

The National Law allows anyone to make voluntary notifications about a practitioner. Anyone (including practitioners, employers and education providers) can make a voluntary notification about a practitioner if they believe:

- a practitioner's conduct is placing the public at risk
- a practitioner is practising their profession in an unsafe way, or
- a practitioner's health is having a detrimental effect on their capacity to practise safely.

For more information about making a voluntary notification, please go to our website, see: www.Ahpra.gov.au/notifications, or call 1300 419 495.

2. Concerns to report

This section defines the four types of concerns that may trigger a mandatory notification about a registered health practitioner: impairment, intoxication, significant departure from accepted professional standards and sexual misconduct. It also explains the concept of 'reasonable belief'.

When you need to make a notification differs depending on whether you are a treating practitioner, non-treating practitioner or employer. Read this section, alongside *section 3 Notifications by treating practitioners*, *section 4 Notifications by non-treating practitioners* or *section 5 Notifications by employers of practitioners*, to understand how to assess whether you must make a mandatory notification.

2.1 What concerns must be reported?

A mandatory notification about a practitioner can be triggered by concerns about:

- impairment
- intoxication while practising
- a significant departure from accepted professional standards, and
- sexual misconduct.

Depending on the type of concern, you must assess the risk of harm to the public when deciding whether to make a notification. In this context, 'the public' means:

- a practitioner's patients or clients, and
- the wider community that could be put at risk of harm.

The circumstances that would trigger a notification are different for different groups. To understand what you should consider, please refer to the right section for you:

- *section 3: Notifications by treating practitioners*
- *section 4: Notifications by non-treating practitioners, or*
- *section 5: Notifications by employers of practitioners.*

If you are deciding whether to make a mandatory notification about a student, please read our separate guideline for practitioners and education providers, *Guidelines: Mandatory notifications about registered students*.

2.2 What is 'reasonable belief'?

Before making a mandatory notification, you must form a 'reasonable belief'. To do so, you generally need direct knowledge (not just a suspicion) of the incident or behaviour that led to a concern. As a practitioner or employer, you are most likely to do this when you directly observe the incident or behaviour. Speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

You may have a report from a reliable source or sources about conduct they directly experienced or observed. In that case, you should encourage the person with the most direct knowledge of the incident or behaviour to consider whether to make a notification themselves.

Your professional background, level of insight, experience and expertise will help you form a reasonable belief. Mandatory notifications should be based on personal knowledge of reasonably trustworthy facts or circumstances that would justify a person of reasonable caution, acting in good faith, to believe that the concern and a risk to the public exists.

These principles about forming a 'reasonable belief' come from legal cases. In short, a reasonable belief is a state of mind based on reasonable grounds. It is formed when all known considerations, including matters of opinion, are objectively assessed and taken into account.

2.3 What is impairment?

The National Law defines 'impairment' as 'a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the person's capacity to practise the profession'.

A health condition and impairment are not the same thing. An illness or condition that does not or is not likely to have a detrimental impact on a practitioner's capacity to practise is not an impairment.

You do not need to notify if there are effective controls to manage the impairment and reduce the risk and severity of harm to the public, such as:

- treatment
- a break from practice, such as sick leave
- modified scope of practice
- strategies used to manage impacts of impairment
- compliance with monitoring and supervision, or
- a reasonable belief that Ahpra has already been notified.

If you are a treating practitioner, the circumstances for making a mandatory notification about impairment are more limited for you than other groups. Please read *section 3.2 When must I report impairment?* to help you assess whether to report.

Impairment is the only type of mandatory notification that applies to students. You would make a mandatory notification about a student with an impairment only if, while they undertake clinical training, the public is placed at substantial risk of harm. For more information, please read our *Guideline: Mandatory notifications about registered students*.

2.4 What is intoxication while practising?

The word 'intoxicated' is not defined in the National Law, so it has the ordinary meaning of 'under the influence of alcohol or drugs'. 'Drugs' include illicit drugs and prescribed and over-the-counter medicines.

If a practitioner is practising their health profession while intoxicated, this can trigger a mandatory notification. A practitioner is considered to be intoxicated when their reasonable care and skill in the practice of the profession is impaired or adversely affected by drugs or alcohol.

The key issue is that the practitioner is practising while intoxicated, regardless of when they consumed the drugs or alcohol.

You do not need to report if the practitioner is intoxicated in their private life (when not practising their profession), unless the intoxication triggers another concern for a mandatory notification.

If you are a treating practitioner, the circumstances for making a mandatory notification about intoxication while practising are more limited for you than other groups. Please read *section 3.3 When must I report intoxication while practising?* to help you assess whether to report.

2.5 What is a significant departure from accepted professional standards?

'Accepted professional standards' includes reference to documents like the code of conduct and guidelines. It covers both practice and professional behaviour. You must understand the standards for that profession to judge whether there has been a significant departure from them.

If a practitioner's practice shows a significant departure from accepted professional standards that places the public at risk of harm, it can trigger a mandatory notification. A significant departure is serious (not slight or moderate) and would be obvious to any reasonable practitioner.

You do not need to make a mandatory notification if a practitioner meets accepted standards while engaged in innovative practice. Different clinical decision-making or treatment approaches also do not trigger mandatory notification if a practitioner meets accepted professional standards.

Mandatory notifications about another practitioner from a different health profession are more likely to be triggered in a team environment, such as a surgical or mental health team. This is because different health professions work closely together and understand each other well.

If you are a treating practitioner, the circumstances for making a mandatory notification about a departure from accepted standards are more limited for you than other groups. Please read *section 3.4 When must I report a significant departure from professional standards?* to help you assess whether to report.

2.6 What is sexual misconduct?

For mandatory notifications, sexual misconduct is:

- in connection with the practice of the practitioner's health profession, and
- with people under the practitioner's care or linked to the practitioner's practice of their health profession.

It includes:

- sexual activity with a current patient or client, whether or not they give consent
- making sexual remarks
- touching patients or clients in a sexual way
- touching a patient in an intimate area without a clinical indication whether or not they give consent, and
- engaging in sexual behaviour in front of a patient or client.

Because of the power imbalance between practitioners and their patients or clients, any sexual activity with a patient or client is sexual misconduct, even with their consent. Engaging in sexual activity with a person closely related to a patient or client under the practitioner's care may also be sexual misconduct. In some cases, that person (such as the parent of a child patient or client) may also be considered a patient or client.

Engaging in sexual activity with a person formerly under a practitioner's care after the professional relationship has ended may also be sexual misconduct. This depends on:

- whether the patient or client is vulnerable because of age, capacity or health conditions
- the means by which sexual activity was established (for example, whether a practitioner used information obtained during a treating relationship to contact a patient and commence sexual activity)
- the extent of the professional relationship (for example, a one-off treatment compared to a long-term program of treatment), and
- the length of time since the practitioner–patient/client relationship ended.

If you are a treating practitioner, the conditions for making a mandatory notification about sexual misconduct are different to other groups. Please read *section 3.5 When must I report sexual misconduct?* to help you assess when to report.

3. Notifications by treating practitioners

This section explains your obligations as a treating practitioner.

A treating practitioner is a practitioner who becomes aware of the concern while providing treatment to another practitioner.

The circumstances for treating practitioners to make mandatory notifications are more limited than they are for other groups.

Read this section to understand how to assess whether to make a mandatory notification.

Treating practitioners in Western Australia providing a health service to a practitioner-patient are exempt from the requirement to make a mandatory notification. See *section 1.6 Who is exempt from notifying?* for more information.

3.1 What are my obligations?

You must make a mandatory notification as a treating practitioner if, while treating another practitioner as your patient (a practitioner-patient), you form a reasonable belief that they:

- **are practising with an impairment and placing the public at substantial risk of harm**
- **are practising while intoxicated by alcohol or drugs and placing the public at substantial risk of harm**
- **are practising in a way that significantly departs from accepted professional standards and placing the public at substantial risk of harm, or**
- **have engaged in, are engaging in or might engage in sexual misconduct connected to their practice.**

If you did not become aware of the concern while treating the other practitioner as your patient, see *section 4: Notifications by non-treating practitioners*.

If you are concerned about a practitioner practising with an impairment, practising while intoxicated, or significantly departing from accepted professional standards, you must also consider whether this is placing the public at substantial risk of harm.

However, a lower threshold for making a mandatory notification applies for sexual misconduct. If you have the reasonable belief that your practitioner-patient has engaged, is engaging or is at risk of engaging in sexual misconduct in connection with their practice, you must report that.

With the exception of concerns about sexual misconduct, you should make a notification only if you believe there is a substantial risk of harm. A substantial risk of harm is a very high threshold for reporting risk of harm to the public. This allows practitioner-patients to seek and have treatment for conditions without fearing a mandatory notification.

Use the charts in the following sections to help assess whether to make a mandatory notification. Consider if the risk to the public is controlled by contextual circumstances or being managed through effective treatment or other strategies. If so, this can decrease the risk of harm – and the need to report.

You may also need to make a mandatory notification about a student only if the student, doing clinical training with an impairment, is placing the public at substantial risk of harm. For more information, please read our *Guideline: Mandatory notifications about registered students*.

There are consequences if you fail to make a mandatory notification when you have to. Although this is not a criminal offence under the National Law, your National Board may take regulatory action against you (such as, for example, a caution). It will consider all the circumstances before it decides whether to do so.

3.2 When must I report impairment?

You must make a mandatory notification if you form a reasonable belief that your practitioner-patient is placing the public at substantial risk of harm (a very high threshold for reporting risk of harm to the public) by practising with an impairment.

To decide if a practitioner-patient's impairment puts the public at substantial risk of harm, consider:

- the nature, extent and severity of the impairment
- what steps a practitioner-patient is taking, or willing to take, to manage the impairment
- how well the impairment can be managed with treatment, and
- any other matter relevant to the risk the impairment poses.

You only need to make a mandatory notification if your practitioner-patient is placing the public at substantial risk of harm by practising with an impairment.

Not all impairments need to be reported. A practitioner-patient may have an impairment that causes a detrimental impact on their capacity to practise but, unless it poses a substantial risk of harm to patients, it does not trigger a mandatory notification.

Example 1: A practitioner-patient has a small tremor, which is being treated. They have restricted their practice to consultations, and they no longer perform procedural work. Because the tremor would affect procedural work, not consultations, it causes little risk of harm to the public. This would not trigger a mandatory notification.

Example 2: A practitioner-patient has a mental health condition, which is stable. Because the practitioner-patient is engaged in and complying with treatment, there is no substantial risk of harm to the public. This would not trigger a mandatory notification.

Example 3: A practitioner is diagnosed with early stage dementia. The practitioner works as a sole practitioner in private practice. As the treating practitioner, you advise that the practitioner will soon need to cease practice as the condition is likely to have a detrimental effect on patients, with the memory loss putting patients at substantial risk of harm. You suggest that in the short term the practitioner could move to a group practice and work under supervision or to non-practising registration, but the practitioner-patient refuses and insists their memory loss is not affecting their practice. As this meets the very high threshold for reporting risk of harm to the public, you decide to make a mandatory notification.

If an impairment is related to or is a major cause of intoxication or departure from professional standards, consider how effective the practitioner-patient's treatment is when you are deciding if it meets the very high threshold for reporting.

Factors including circumstance, practice context, controls such as oversight and incident reporting, and other arrangements can affect the level of risk — and the need to report. The risk assessment for a very high risk of harm should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance.

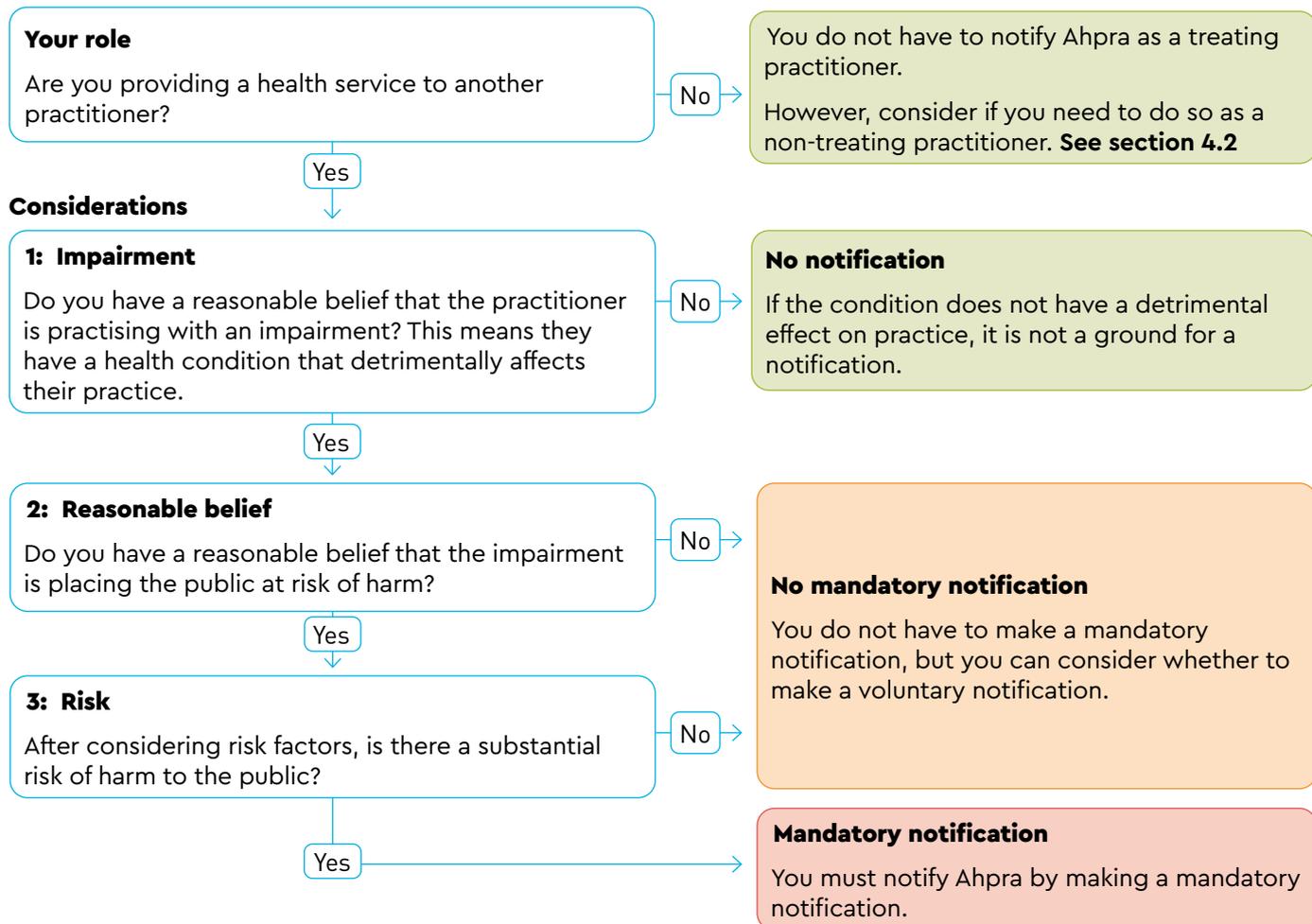
Use the following chart to help assess the level of risk. The list of factors is designed to identify issues that may be relevant when deciding if a mandatory notification is necessary. The list is not exhaustive. It is not possible to list all the factors that may be relevant to a case and there may be other factors that you need to consider on a case by case basis. This list highlights some common factors relevant to assessing the risk of harm.

Treating practitioner: Impairment – Factors to help you assess the risk of harm

Factors	Lower	>	>	Higher
Nature, extent and severity of impairment	Minor	>	>	Wide-ranging and severe
Practice context	Part of integrated team	>	>	Isolated and/or sole practice
How well the impairment can be managed with treatment	Well-managed	>	>	Unmanaged
Extent of engagement with treatment	Highly engaged and compliant	>	>	Disengaged – likely to work when they shouldn't
Strategies used to manage impacts of impairment	Highly effective	>	>	Ineffective

Use the flowchart to help you assess whether to make a mandatory notification.

Treating practitioner: Impairment



For more on what impairment means under the National Law, see *section 2.3 What is impairment?*

3.3 When must I report intoxication while practising?

You must make a mandatory notification if you form a reasonable belief that your practitioner-patient is placing the public at substantial risk of harm (a very high threshold for reporting risk of harm) to the public by practising while intoxicated by drugs or alcohol.

Example 1: A practitioner-patient discloses to you that they once practised while intoxicated. Because the practitioner-patient does not have issues with drug or alcohol misuse, the incident occurred several years ago, no harm occurred, and it was an isolated incident unlikely to occur again, there is no substantial risk of harm to the public. You do not need to make a mandatory notification.

Example 2: A practitioner-patient discloses that their employer has discovered that they used ice recreationally and is concerned they will be terminated. The practitioner-patient admits using the drug recreationally but does not believe this has an impact on their practice and even though use is becoming more frequent, they are convinced they can manage it. They have gone to work at least once while still intoxicated from recreational use. You determine that the increasing use is having an adverse effect on practice and would lead to a substantial risk to the public, especially as the practitioner-patient is not demonstrating any insight or willingness to seek treatment. The risk is heightened, because if they are terminated, they might seek work elsewhere and the new employer would not be aware of the potential risk. You decide to make a mandatory notification.

If the intoxication is connected to an impairment see *section 2.3 What is impairment?* This will help you assess whether:

- the intoxication impairment is being treated appropriately, and
- if you need to make a mandatory notification.

Factors including circumstance, practice context, the frequency of the event, and controls such as, oversight, incident reporting, and other arrangements can affect the level of risk — and the need to report. The risk assessment for a very high reporting threshold should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance.

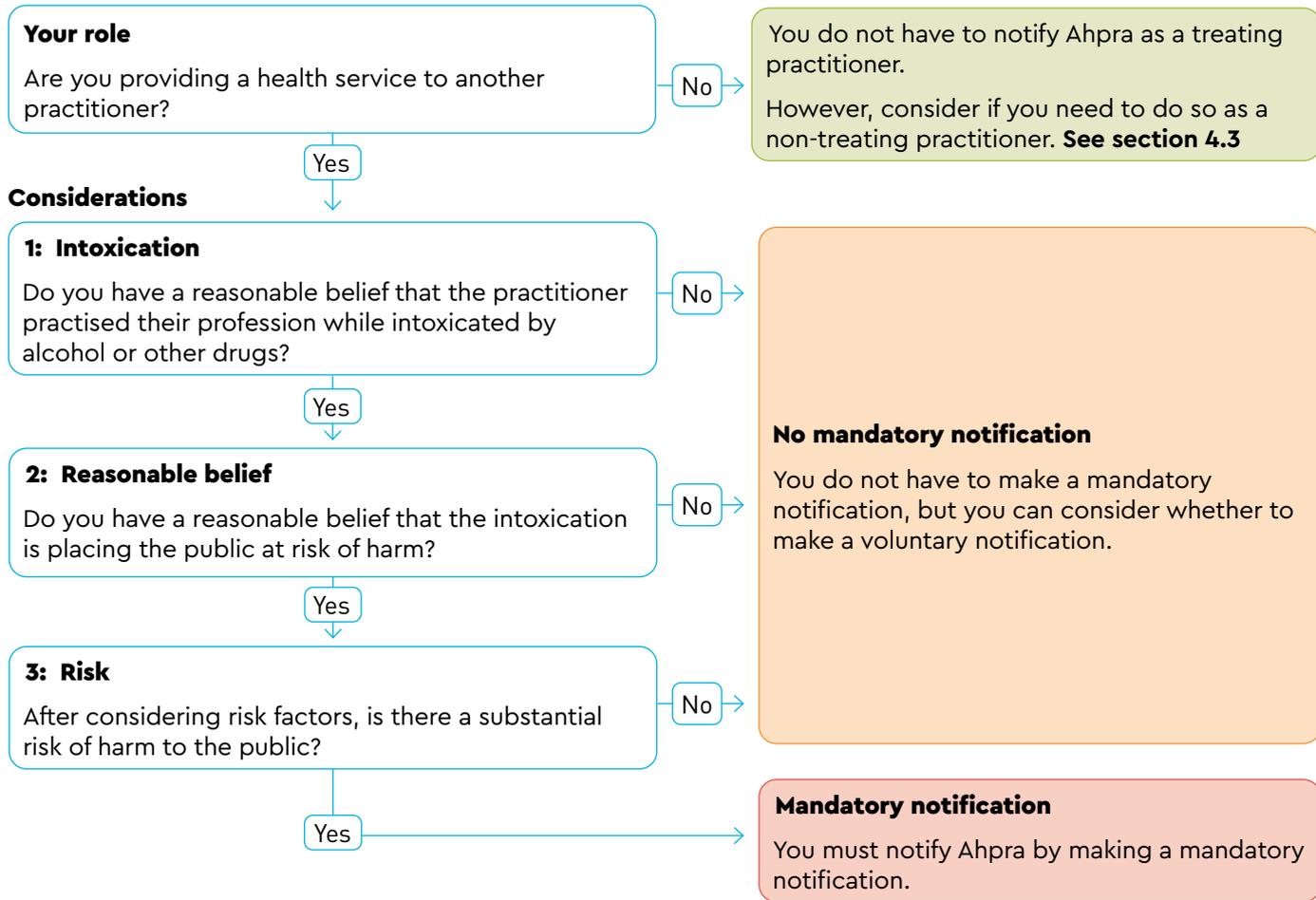
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Treating practitioner: intoxication – Factors to help you assess the risk of harm

Factors	Lower	Higher
Extent and duration of intoxication	Minor and/or short term	Severe and/or long term
Practice context	Part of integrated team	Isolated and/or sole practice
How often event occurs	Isolated incident	Pattern of behaviour
Extent of self reflection	Highly reflective and insightful	In denial likely to work again while intoxicated

Use the flowchart to help you assess whether to make a mandatory notification.

Treating practitioner: Intoxication



For more on what intoxication while practising means under the National Law, see *section 2.4 What is intoxication while practising?*

3.4 When must I report a significant departure from professional standards?

You must make a mandatory notification if you form a reasonable belief that your practitioner-patient is placing the public at substantial risk of harm (a very high threshold for reporting risk of harm to the public) by practising in a way that significantly departs from accepted professional standards.

It may be more difficult for you to assess this without directly observing your practitioner-patient's practice, especially if you are in a different profession. Other practitioners who work directly with your practitioner-patient can observe their practice directly and better assess the risk to the public. They are more likely to make mandatory notifications.

If the departure from professional standards relates to an impairment the practitioner-patient has, see *section 3.2 When must I report impairment?* to work out if you need to report.

A practitioner-patient may practise in a way that constitutes a significant departure from accepted professional standards, but that is not enough to trigger a mandatory notification. You need to make a mandatory notification only if the significant departure also places the public at substantial risk of harm.

Example 1: Your practitioner-patient tells you that they once failed to follow protocol and made a substantial error with medicines. The practitioner-patient explains that the error was because of personal stress but is unlikely to happen again, as their employer is now aware of the issues, and the practitioner or employer has taken steps to address this. Although the practice may have briefly departed significantly from accepted standards, it does not trigger a mandatory notification because it does not put the public at substantial risk of harm.

Example 2: Your practitioner-patient tells you they have used an unconventional treatment to 'cure' a skin cancer, advising their patients to abandon other conventional and accepted treatments. You know that the treatment is unsafe and dangerous, but when you raised this, the practitioner-patient shut down the discussion and changed the topic. The practitioner-patient works as a sole practitioner in a private practice. As you believe the practitioner-patient's practice is a significant departure from accepted standards that puts the public at substantial risk of harm, you decide to make a mandatory notification.

Factors including circumstance, practice context, extent of self-reflection, controls such as oversight, incident reporting, and other arrangements can affect the level of risk — and the need to report. The risk assessment for a very high reporting threshold should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance.

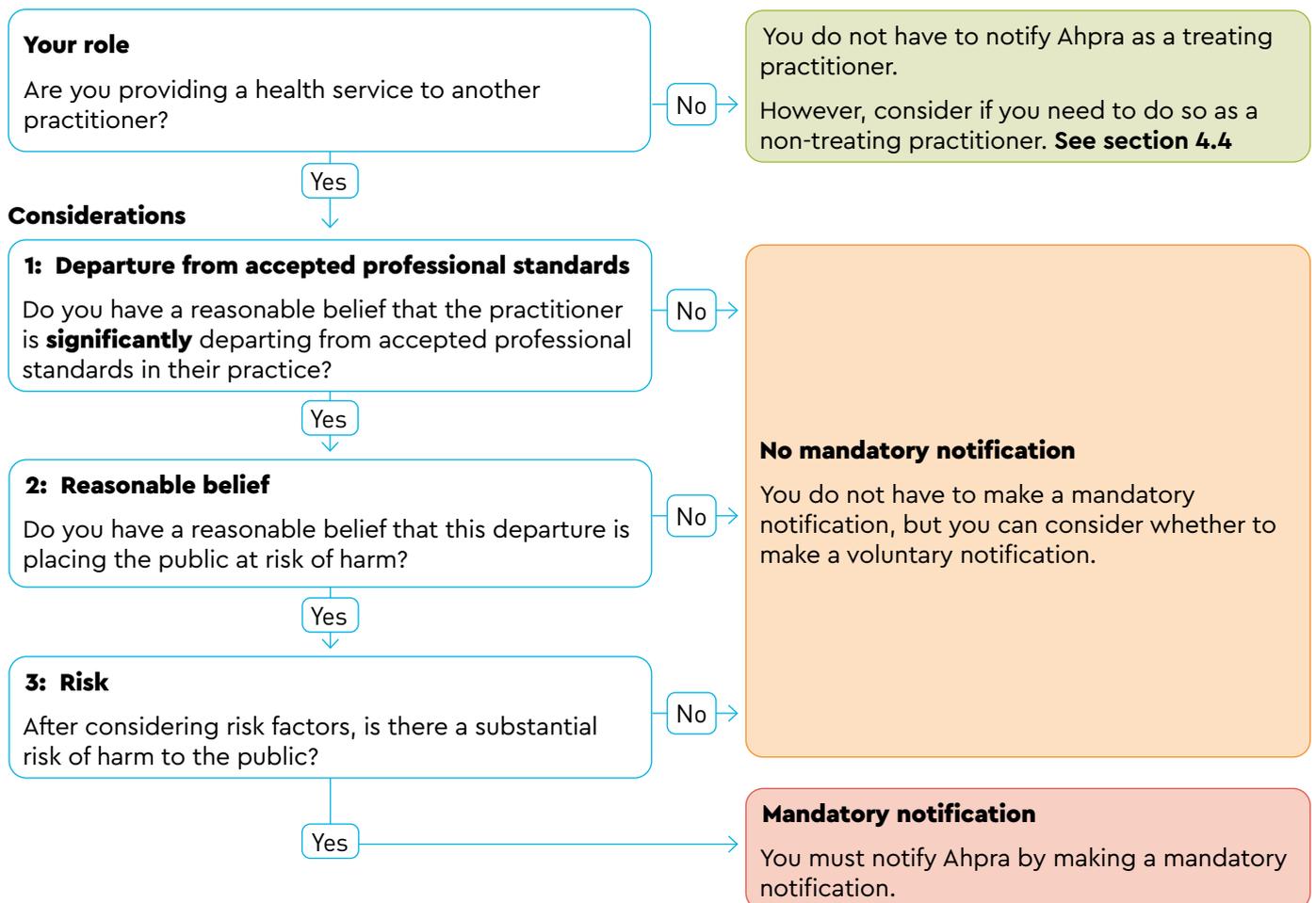
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Treating practitioner: departure from professional standards – Factors to help you assess the risk of harm

Factors	Lower	>	>	Higher
Practice context	Part of integrated team	>	>	Isolated and/or sole practice
Capacity to judge the extent of the departure	Few shared competencies	>	>	Same profession
Action underway to redress gaps in practice	Actively engaging in bridging gap	>	>	Unwilling or unable to take action to address issues
Extent of self reflection	Highly reflective and insightful	>	>	No insight or reflection
How often event occurs	Isolated incident	>	>	Pattern of practice
Attitude towards compliance with professional standards	Committed to compliance	>	>	Decided not to comply
Extent of harm	Minor	>	>	Severe

Use the flowchart to help you assess whether to make a mandatory notification.

Treating practitioner: Significant departure from accepted professional standards



For more on what a significant departure from standards means under the National Law, see section 2.5 *What is a significant departure from accepted professional standards?*

3.5 When must I report sexual misconduct?

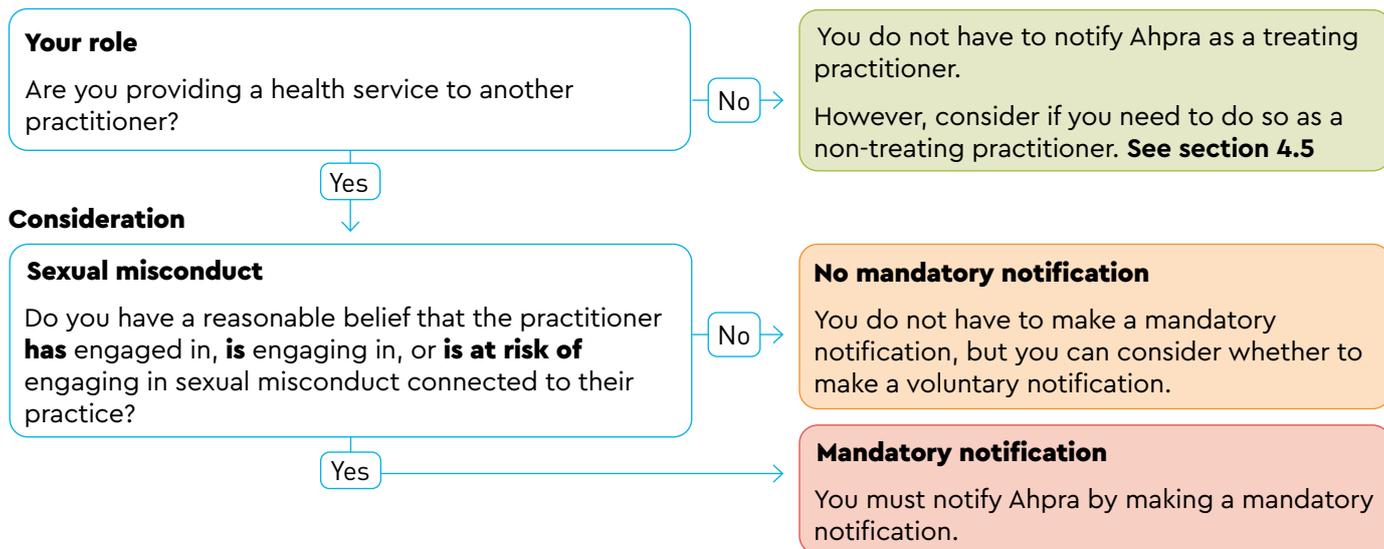
You must make a mandatory notification if you form a reasonable belief that your practitioner-patient has engaged, is engaging in, or is at risk of engaging in sexual misconduct in connection with their practice.

You must report past, current and future risk of sexual misconduct that is connected to the practitioner-patient's practice.

Example: Your practitioner-patient discloses a detailed plan to engage in sexual misconduct or discloses conduct that amounts to 'grooming'. You must make a mandatory notification.

Use the flowchart to help you assess whether to make a mandatory notification.

Treating practitioner: Sexual misconduct



For more on what sexual misconduct means under the National Law, see *section 2.6 What is sexual misconduct?*

4. Notifications by non-treating practitioners

This section explains your obligations as a non-treating practitioner.

A non-treating practitioner is a practitioner who has a concern about another practitioner (for example, a colleague) but did not identify it while (if) treating that practitioner. The concern cannot have come from being in a treating relationship with that other practitioner.

This section tells you your obligations and when you must make a mandatory notification about impairment, intoxication, departure from professional standards and sexual misconduct.

Read this section to understand how to assess whether you must make a mandatory notification.

4.1 What are my obligations?

You must make a mandatory notification as a non-treating practitioner (most likely a manager, colleague or co worker) if, in practising your profession, you form a reasonable belief that another registered health practitioner is:

- **practising with an impairment and placing the public at risk of substantial harm**
- **practising while intoxicated by alcohol or drugs**
- **practising in a way that significantly departs from accepted professional standards and placing the public at risk of harm, and**
- **engaging in sexual misconduct in connection with their practice.**

If you are concerned about a practitioner practising with an impairment or significantly departing from accepted professional standards, you must also consider whether their conduct is placing the public at risk of harm and the level of potential harm to the public. However, practising while intoxicated or engaging in sexual misconduct might need to be reported regardless of the risk to the public. For more information on these risk limits, see the following sections.

If you became aware of the concern while treating the practitioner as your patient, see *section 3 Notifications by treating practitioners*.

You may need to make a mandatory notification about a student only if the student, undertaking clinical training with an impairment, is placing the public at substantial risk of harm which is a very high threshold for reporting risk of harm. For more information, please read our *Guideline: Mandatory notifications about registered students*.

There are consequences if you fail to make a mandatory notification when you have to. Although this is not a criminal offence under the National Law, your National Board may take regulatory action against you (such as, for example, a caution). It will consider all the circumstances before it decides whether to do so.

4.2 When must I report impairment?

You must make a mandatory notification if you form a reasonable belief that another practitioner in any registered health profession is placing the public at risk of substantial harm (a high threshold for reporting risk of harm) by practising with an impairment.

You should make a mandatory notification only if you believe there is a risk of substantial harm. A risk of substantial harm is a high threshold for reporting risk of harm to the public.

Use the chart and flowchart in the following section to help assess whether to make a mandatory notification. Consider if the risk to the public is controlled by contextual circumstances or being managed through effective treatment or other strategies. If so, this can decrease the risk of harm – and the need to report.

Not all impairments need to be reported. A practitioner may practise with a mental illness, physical health condition or physical illness, but that is not enough to trigger a mandatory notification. A practitioner may have an impairment that causes a detrimental impact on their capacity to practise but, if it does not pose a risk of substantial harm to the public, it does not trigger a mandatory notification.

Example: Your colleague has a small tremor, which is being treated. This practitioner has restricted their practice to consultations, and they no longer perform procedural work. Because the tremor would affect procedural work, not consultations, it causes little risk of harm to the public. This is unlikely to trigger a mandatory notification.

Factors including circumstance, practice context, controls such as engagement with treatment, and other arrangements can affect the level of risk – and the need to report. The risk assessment for a high risk of harm should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance. As a non-treating practitioner, you may not have access to detailed information about all the factors listed below.

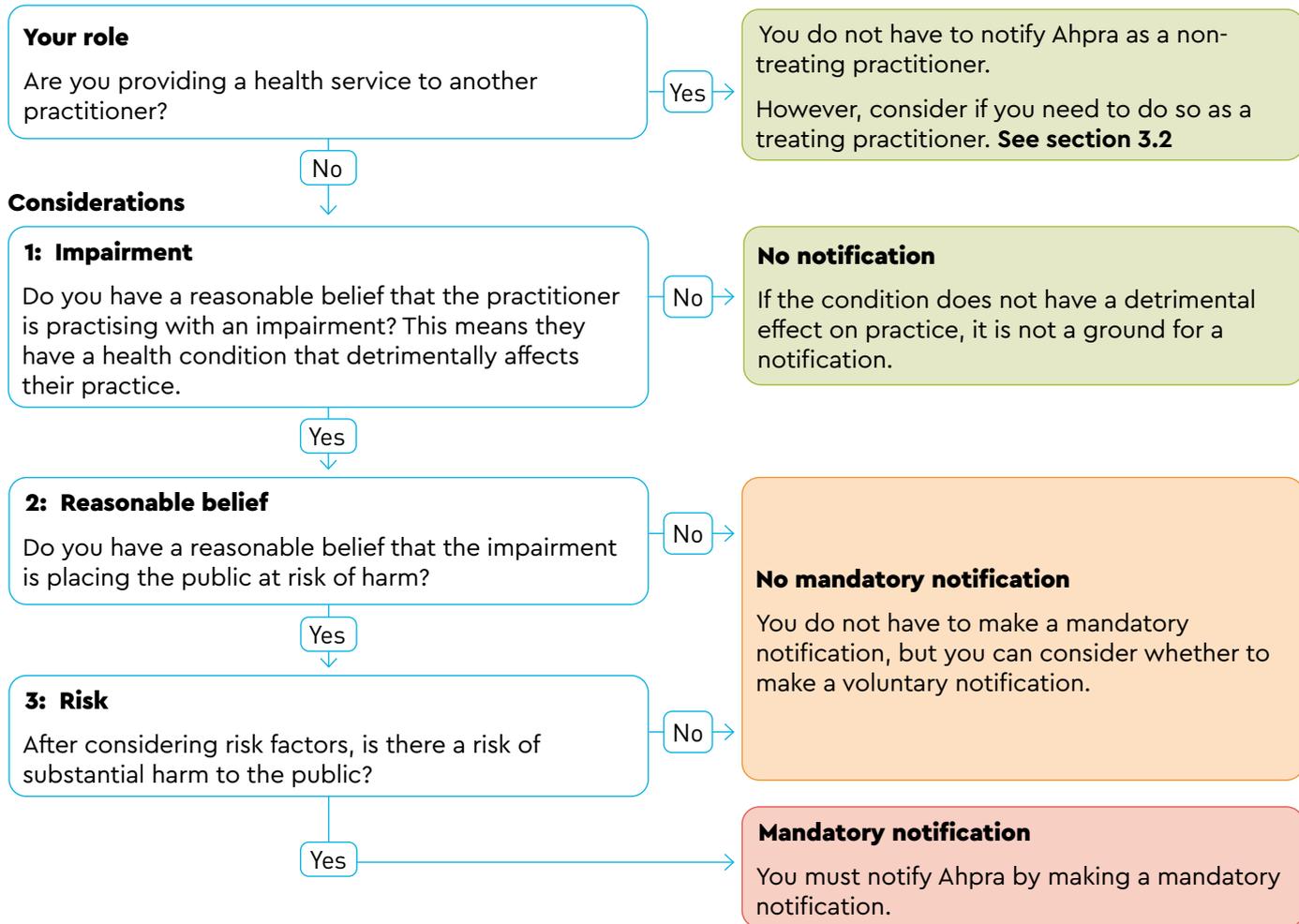
Use the following chart to help assess the level of risk. The list of factors is designed to identify issues that may be relevant when deciding if a mandatory notification is necessary. The list is not exhaustive. It is not possible to list all the factors that may be relevant to a case and there may be other factors that you need to consider on a case by case basis. This list highlights some common factors relevant to assessing the risk of harm.

Non-treating practitioner: impairment – Factors to help you assess the risk of harm

Factors	Lower	>	Higher
Nature, extent and severity of impairment	Minor	>	Wide-ranging and severe
Practice context	Part of integrated team	>	Isolated and/or sole practice
How well the impairment can be managed with treatment	Well-managed	>	Unmanaged
Extent of engagement with treatment	Highly engaged and compliant	>	Disengaged – likely to work when they shouldn't
Strategies used to manage impacts of impairment	Highly effective	>	Ineffective

Use the flowchart to help you assess whether to make a mandatory notification.

Non-treating practitioner: Impairment



For more on what impairment means under the National Law, see *section 2.3 What is impairment?*

4.3 When must I report intoxication while practising?

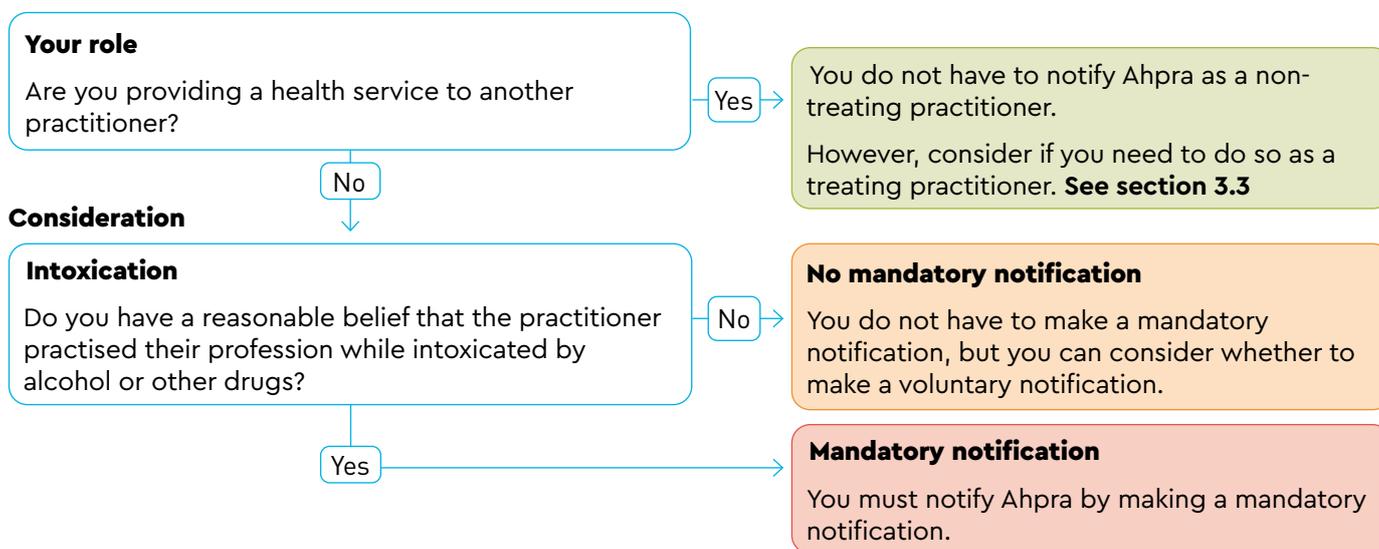
You must make a mandatory notification if you form a reasonable belief that another practitioner is practising while intoxicated by drugs or alcohol.

Example 1: While at a party over the weekend, you see a colleague with a group of people smoking marijuana. You wonder if this is also going on at work. As you have not formed a reasonable belief that your colleague is intoxicated at work, there is no need to make a mandatory notification.

Example 2: You see your colleague coming back from a long lunch. They smell of alcohol and are a bit unsteady on their feet. Their speech is slurred. Because you have directly observed signs of intoxication and you have formed the reasonable belief that they are intoxicated while at work, you make a mandatory notification.

Use the flowchart to help you assess whether to make a mandatory notification.

Non-treating practitioner: Intoxication



For more on what intoxication while practising means under the National Law, see *section 2.4 What is intoxication while practising?*

4.4 When must I report a significant departure from professional standards?

You must make a mandatory notification if you form a reasonable belief that another practitioner is placing the public at risk of harm by practising in a way that departs significantly from accepted professional standards.

Non-treating practitioners in the same profession or specialty or workplace team, may more easily identify this practice, because they are in a better position to see it. They are more likely to make mandatory notifications compared with a practitioner in a different specialty or profession.

A practitioner may practise in a way that departs significantly from professional standards, but this does not trigger a mandatory notification. You need to make a mandatory notification only if the practitioner is placing the public at risk of harm.

Example 1: You know that a colleague once made an error with medicines. They took remedial steps as part of a performance management plan, and their practice is now closely monitored. Although their practice may have departed significantly from professional standards, the risk of harm to the public is rare because there are adequate controls and strategies. You do not need to make a mandatory notification.

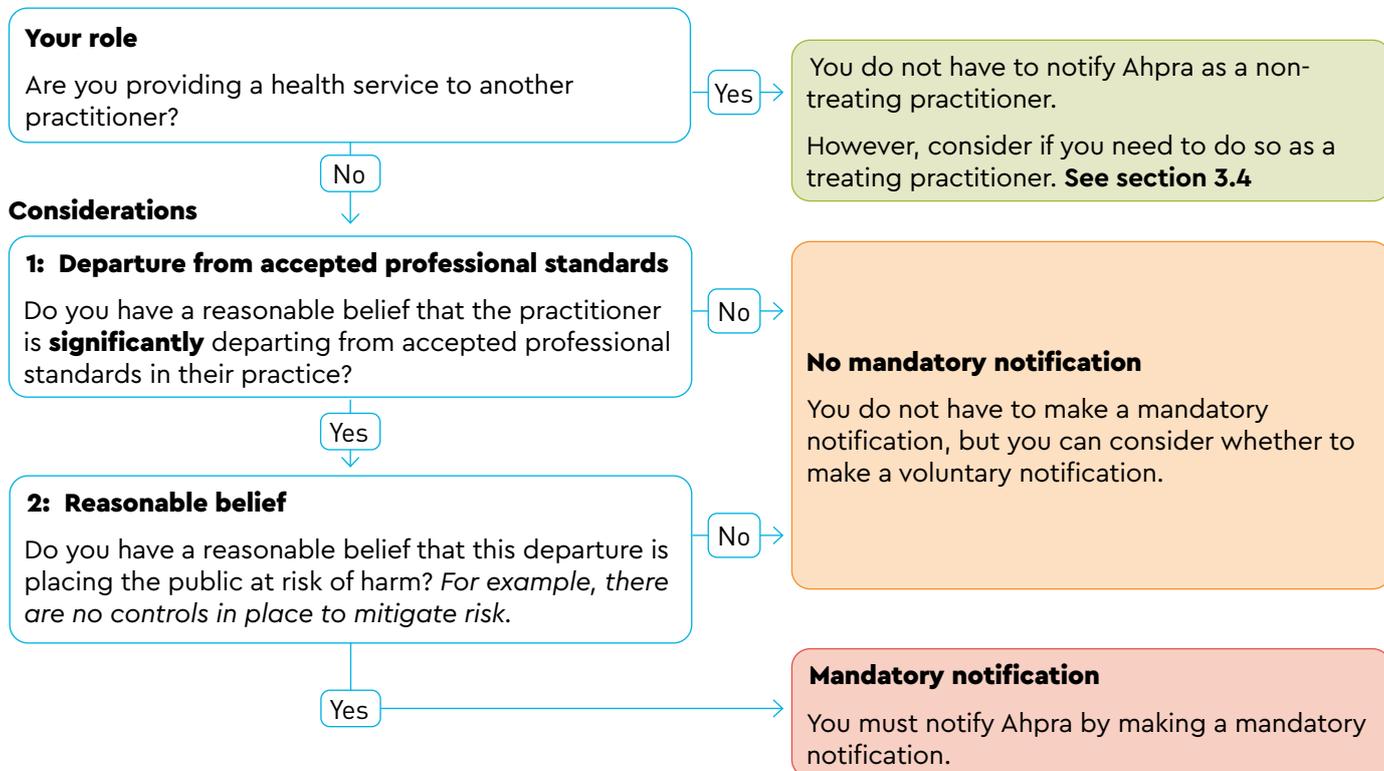
You may need to make a mandatory notification if, after you report concerns to your employer about a colleague's standards of practice, you still do not believe that the risk to the public is adequately managed. It may be useful to talk to your employer about your concerns before you decide if you need to make a mandatory notification.

A difference of opinion does not trigger a mandatory notification.

Example 2: Another practitioner refers a patient to you, and you disagree with their treatment plan. The plan is significantly different from what you believe is best practice, but not necessarily from accepted professional standards. The patient is not at risk of harm. You do not need to notify.

Use the flowchart to help you assess whether to make a mandatory notification.

Non-treating practitioner: Significant departure from accepted professional standards



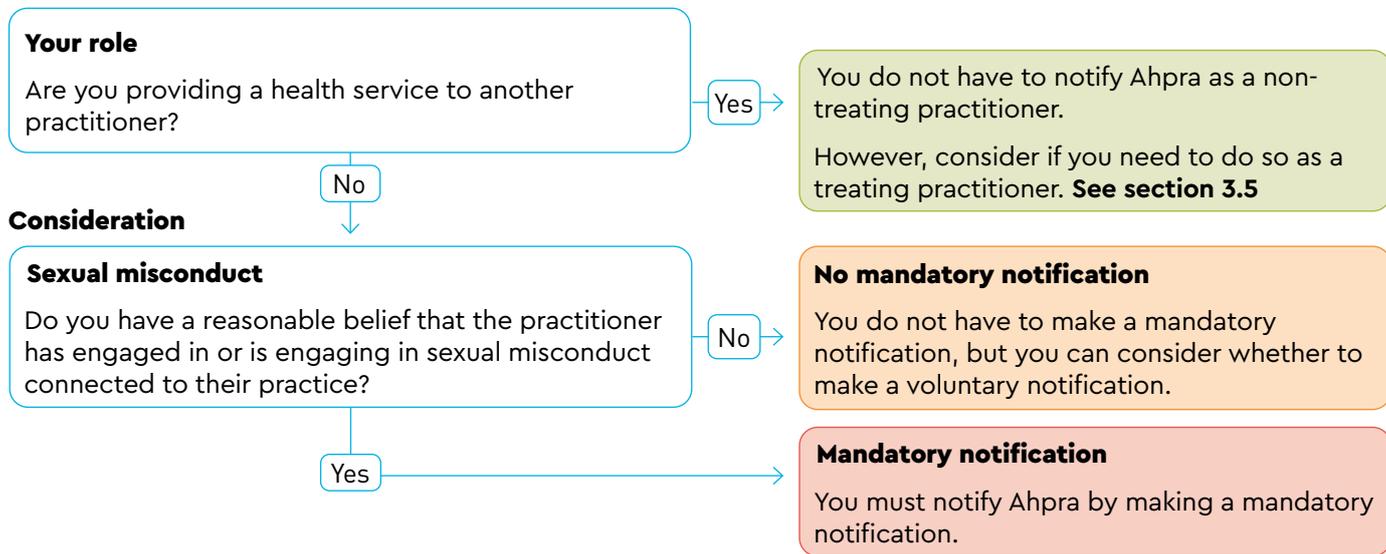
For more on what a significant departure from standards means under the National Law, see section 2.5 *What is a significant departure from accepted professional standards?*

4.5 When must I report sexual misconduct?

You must make a mandatory notification if you form a reasonable belief that another practitioner has or is engaging in sexual misconduct in connection with their practice.

Use the flowchart to help you assess whether to make a mandatory notification.

Non-treating practitioner: Sexual misconduct



For more on what sexual misconduct means under the National Law, see section 2.6 *What is sexual misconduct?*

5. Notifications by employers of practitioners

This section is for employers of practitioners.

An employer is a person or organisation that employs a practitioner under an employment or service contract or as a volunteer.

It tells you your obligations and when you must make a mandatory notification about impairment, intoxication, departure from professional standards and sexual misconduct.

Read this section to understand how to assess whether you must make a mandatory notification.

5.1 What are my obligations?

You must make a mandatory notification as an employer if you form a reasonable belief that a registered health practitioner is:

- **practising with an impairment and placing the public at risk of substantial harm**
- **practising while intoxicated by alcohol or drugs**
- **practising in a way that significantly departs from accepted professional standards and placing the public at risk of harm, and**
- **engaging in sexual misconduct in connection with their practice.**

If you are concerned about a practitioner practising with an impairment or significantly departing from accepted professional standards, you must also consider whether their conduct is placing the public at risk of harm and the level of potential harm to the public. However, practising while intoxicated or engaging in sexual misconduct might need to be reported regardless of risk to the public. For more information on these risk limits, see the following sections.

If you decide to make a mandatory notification, it is still your responsibility to manage the employee practitioner's performance and protect the public from risk of harm. An employer is expected to have processes and protocols in place to assess when and how it would make a mandatory notification. Mandatory notification obligations only extend to an employer's (organisation's) staff if the staff member is also a registered practitioner.

There are consequences if you fail to make a mandatory notification when you have to. We must report this failure to notify to the responsible minister in the relevant state or territory. The minister must then report it to a health complaints entity, the employer's licensing authority or another appropriate entity as soon as possible.

5.2 When must I report impairment?

You must make a mandatory notification if you form a reasonable belief that the practitioner is placing the public at risk of substantial harm (a high threshold for reporting harm) by practising with an impairment.

You should make a mandatory notification only if you believe there is a risk of substantial harm. A risk of substantial harm is a high threshold for reporting risk of harm to the public.

Use the chart and flowchart in the following section to help assess whether to make a mandatory notification. Consider if the risk to the public is controlled by contextual circumstances or being managed through effective treatment or other strategies. If so, this can decrease the risk of harm – and the need to report.

Not all impairments need to be reported. A practitioner may practise with a mental illness, physical health condition or physical illness, but that is not enough to trigger a mandatory notification. A practitioner may have an impairment that causes a detrimental impact on their capacity to practise but, if it does not pose a risk of substantial harm to the public, it does not trigger a mandatory notification.

Example 1: An employee practitioner has a small tremor, which is being treated. They take advice from their treating practitioner about the future scope of their practice and ask you to change their duties to exclude procedural work. Because the tremor would affect only procedural work, not consultations, it causes little risk of harm to the public. This impairment is unlikely to trigger a mandatory notification.

Example 2: A employee practitioner applies for sick leave so they can be treated for a mental health condition. They tell you they cannot return to work until their treating practitioner advises them to do so. Because the employee practitioner is engaged in and complying with treatment, there is no substantial risk of harm to the public, so you are not required to make a mandatory notification.

Example 3: You have been monitoring an employee's performance because of recent and growing reports of significant errors and sentinel events. You implemented a direct supervision arrangement. The supervisor reported concerns with the practitioner's cognitive function, so you arranged an assessment. The practitioner resigned as they were unwilling to undergo the assessment. While the practitioner was under close supervision at work, the risk of harm to the public was managed, but now that the practitioner has resigned, there are no controls in place to manage the risk, and they may work somewhere else and not reveal any past issues. You make a mandatory notification, as there is now a high risk of harm to the public.

Factors including circumstance, practice context, extent of engagement with treatment, controls such as breaks from work, and other arrangements can affect the level of risk – and the need to report. The risk assessment for a high risk of harm should holistically consider all relevant factors, with some factors weighted more heavily than others, depending on the circumstance.

Use the following chart to help assess the level of risk. The list of factors is designed to identify issues that may be relevant when deciding if a mandatory notification is necessary.

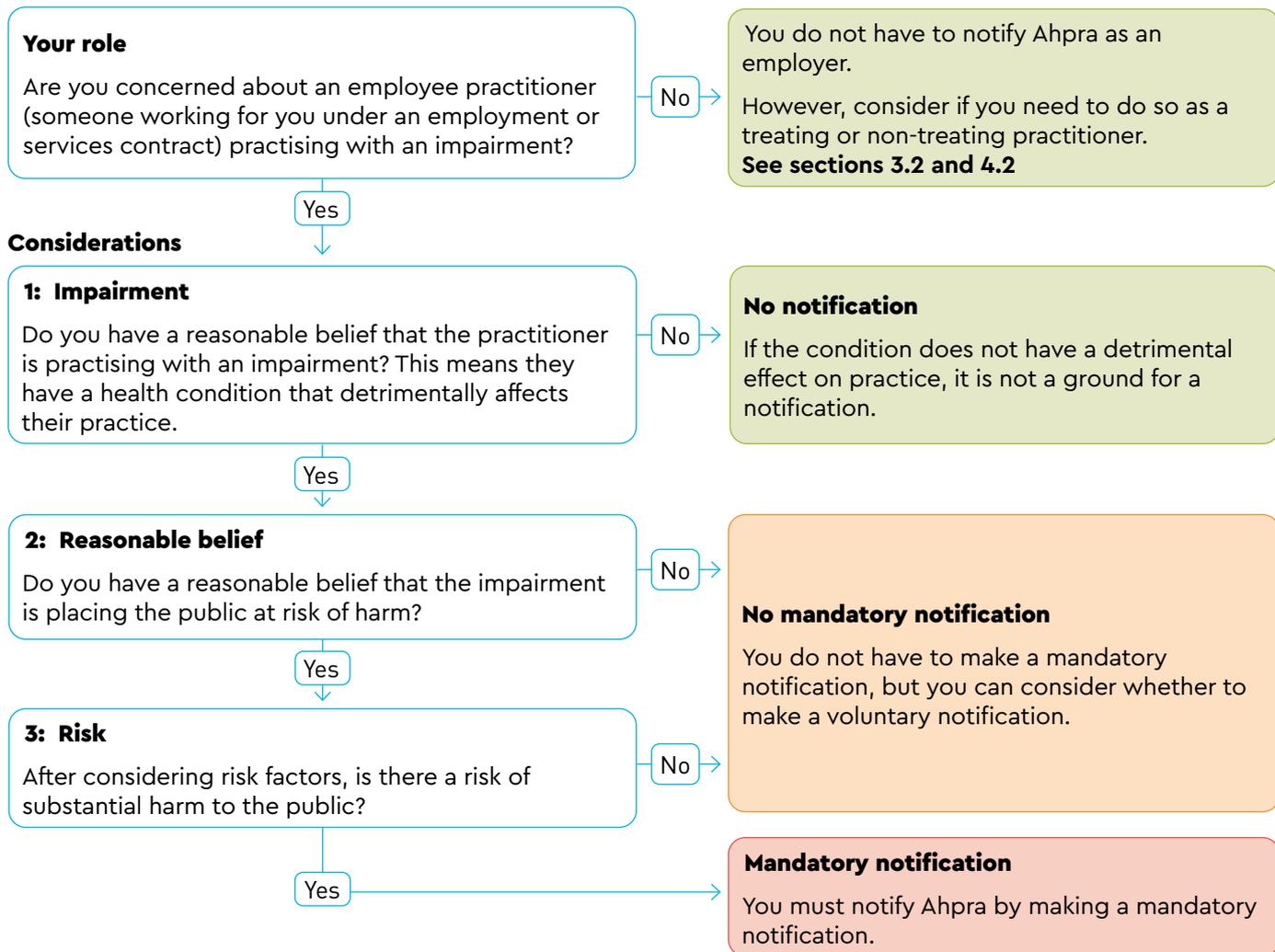
The list is not exhaustive. It is not possible to list all the factors that may be relevant to a case and there may be other factors that you need to consider on a case by case basis. This list highlights some common factors relevant to assessing the risk of harm, however, as an employer, you may not have access to detailed information about all the factors listed below.

Employer: impairment – Factors to help assess the risk of harm

Factors	Lower	Higher
Nature, extent and severity of impairment	Minor	Wide-ranging and severe
Practice context	Part of integrated team	Isolated and/or sole practice
How well the impairment can be managed with treatment	Well-managed	Unmanaged
Extent of engagement with treatment	Highly engaged and compliant	Disengaged – likely to work when they shouldn't
Strategies used to manage impacts of impairment	Highly effective	Ineffective

Use the flowchart to help you assess whether to make a mandatory notification.

Employer: Impairment



For more on what impairment means under the National Law, see section 2.3 *What is impairment?*

5.3 When must I report intoxication while practising?

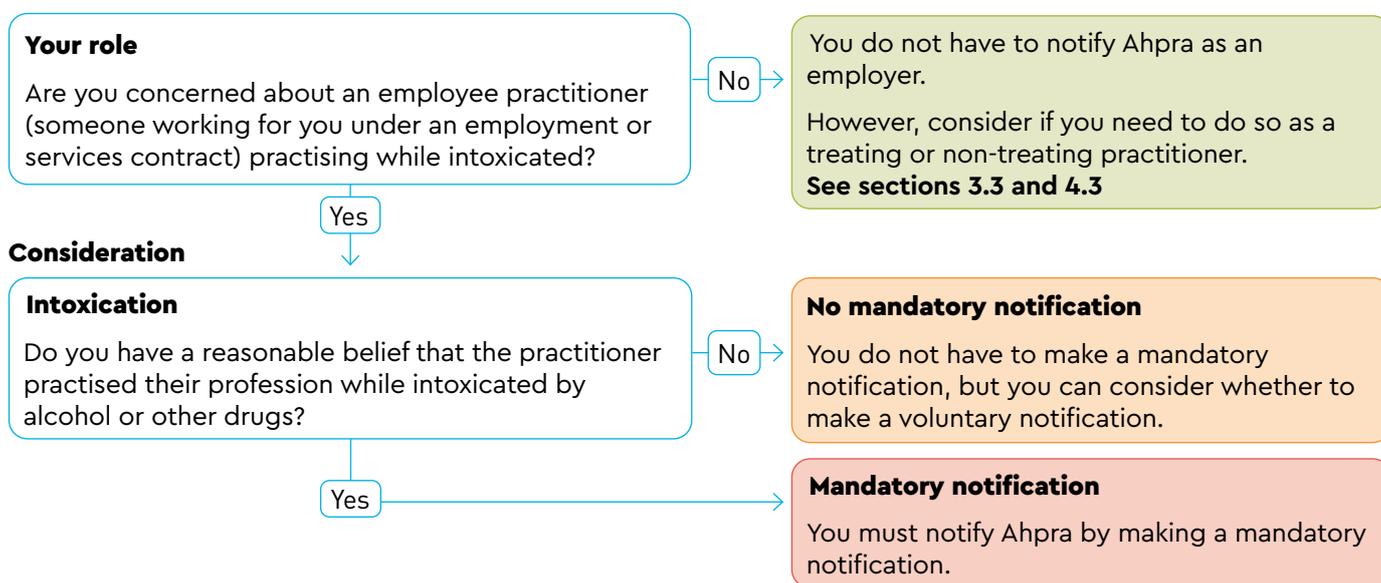
You must make a mandatory notification if you form a reasonable belief that an employee practitioner is practising while intoxicated by drugs or alcohol.

Example 1: You receive a report from an employee that over the weekend, they saw their colleague (an employee practitioner) with a group of people smoking marijuana. You wonder if this is also going on at work. As you have not formed a reasonable belief that the employee is intoxicated at work, there is no need to make a mandatory notification.

Example 2: Your staff have told you that an employee practitioner came back from a long lunch smelling of alcohol, unsteady on their feet and slurring their speech. Because you have a report from reliable sources about signs of intoxication, you may need to make a mandatory notification.

Use the flowchart to help you assess whether to make a mandatory notification.

Employer: Intoxication



For more on what intoxication while practising means under the National Law, see *section 2.4 What is intoxication while practising?*

5.4 When must I report a significant departure from professional standards?

You must make a mandatory notification if you form a reasonable belief that a practitioner is placing the public at risk of harm by practising in a way that departs significantly from accepted professional standards.

A practitioner may practise in a way that departs significantly from professional standards, but this is not enough to trigger a mandatory notification. You need to make a mandatory notification only if the practitioner is placing the public at risk of harm.

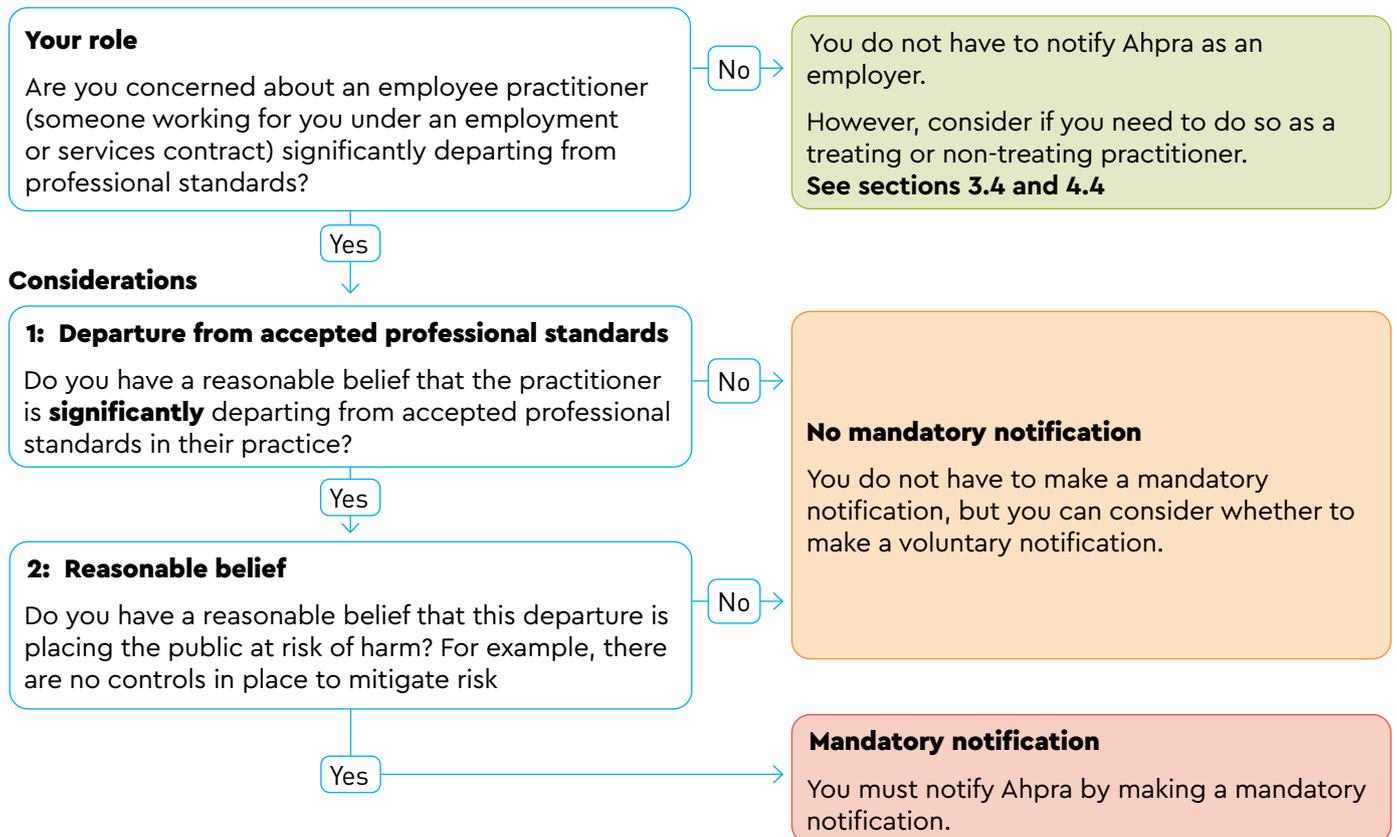
Mandatory notifications should not be used as a performance or risk management measure. The requirement to make a mandatory notification in some circumstances is an independent legal obligation. Performance management alone does not meet the threshold for mandatory notifications.

Example 1: Your employee practitioner failed to follow protocols and made a substantial error with medicines. As part of their performance management plan, they are provided with relevant resources, you implement training, restrict their practice until they demonstrate competency and put in place supervision arrangements to monitor them closely. Although their practice may have departed significantly from professional standards, the risk of harm to the public is negligible because adequate controls and other strategies are in place. You do not need to make a mandatory notification.

Example 2: You are short staffed and employ a practitioner through the locum service. A number of reports are made to you from colleagues about the locum's practice. These range from avoidable errors to practice that is substantially different to accepted standards. You have not yet been able to investigate the claims, but believe that if the reports are accurate, and the locum works somewhere else, the public could be at risk of harm. As you are not able to put in place any controls to manage the risk, you decide to make a mandatory notification. The employee(s) who initially reported the concerns to you may consider that they still need to make a mandatory notification if they still do not believe that the risk to the public is adequately managed. It can therefore be helpful to appropriately clarify how risk to the public is being managed

Use the following flowchart to help you assess whether to make a mandatory notification.

Employer: Significant departure from accepted professional standards



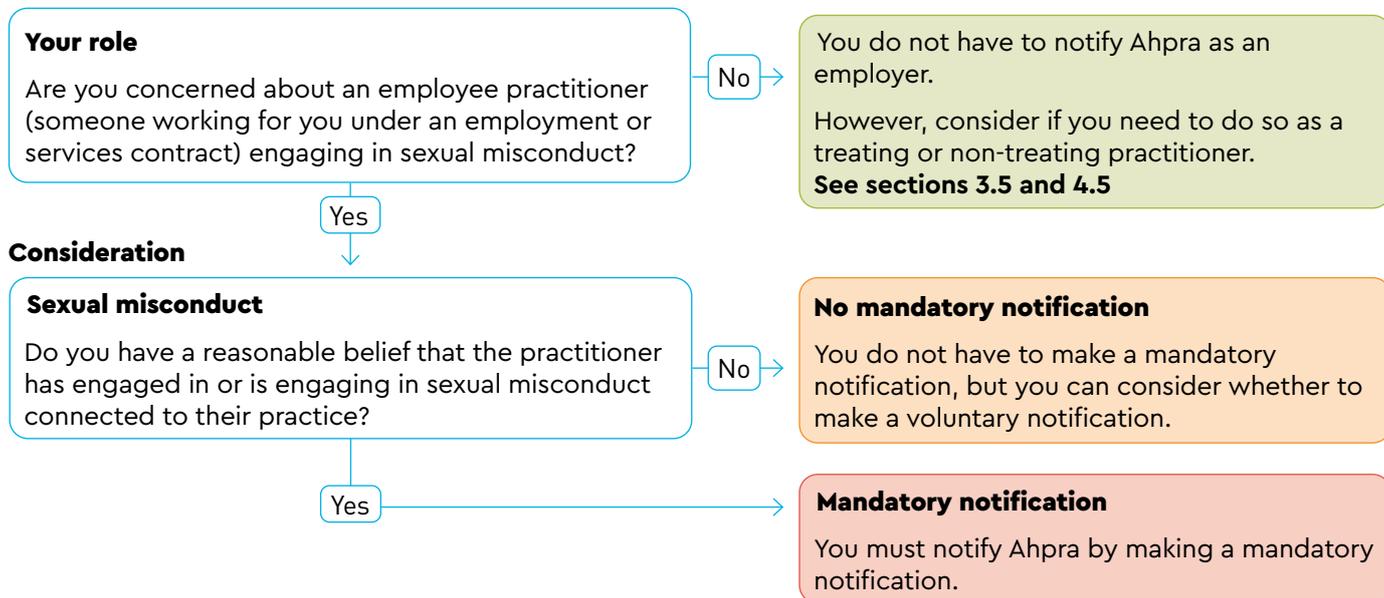
For more on what a significant departure from standards means under the National Law, see section 2.5 *What is a significant departure from accepted professional standards?*

5.5 When must I report sexual misconduct?

You must make a mandatory notification if you form a reasonable belief that a practitioner has or is engaging in sexual misconduct in connection with the practice of their profession.

Use the flowchart to help you assess whether to make a mandatory notification.

Employer: Sexual misconduct



For more on what sexual misconduct means under the National Law, see section 2.6 *What is sexual misconduct?*

Appendix A: National Law extracts

5 Definitions

Impairment, in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect—

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or
- (b) for a student, the student's capacity to undertake clinical training—
 - (i) as part of the approved program of study in which the student is enrolled; or
 - (ii) arranged by an education provider.

Education provider means—

- (a) a university; or
- (b) a tertiary education institution, or another institution or organisation, that provides vocational training; or
- (c) a specialist medical college or other health profession college.

Part 5 National Boards

Division 3 Registration standards and codes and guidelines

39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

Example

1. A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
 - (a) a registration standard developed by the Board and approved by the Ministerial Council;
 - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
 - (a) on the day it is published on the National Board's website; or
 - (b) if a later day is stated in the registration standard, code or guideline, on that day.

41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

Part 7 Registration of health practitioners

Division 11 Miscellaneous

130 Registered health practitioner or student to give National Board notice of certain events

- (1) A registered health practitioner or student must, within 7 days after becoming aware that a relevant event has occurred in relation to the practitioner or student, give the National Board that registered the practitioner or student written notice of the event.
- (2) A contravention of subsection (1) by a registered health practitioner or student does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.
- (3) In this section—

relevant event means—

 - (a) in relation to a registered health practitioner—
 - (i) the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more; or
 - (ii) the practitioner is convicted of or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment; or
 - (iii) appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession; or
 - (iv) the practitioner's right to practise at a hospital or another facility at which health services are provided is withdrawn or restricted because of the practitioner's conduct, professional performance or health; or
 - (v) the practitioner's billing privileges are withdrawn or restricted under the Medicare Australia Act 1973 of the Commonwealth because of the practitioner's conduct, professional performance or health; or
 - (vi) the practitioner's authority under a law of a State or Territory to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines is cancelled or restricted; or
 - (vii) a complaint is made about the practitioner to an entity referred to in section 219(1)(a) to (e); or
 - (viii) the practitioner's registration under the law of another country that provides for the registration of health practitioners is suspended or cancelled or made subject to a condition or another restriction; or
 - (b) in relation to a student—
 - (i) the student is charged with an offence punishable by 12 months imprisonment or more; or
 - (ii) the student is convicted of or the subject of a finding of guilt for an offence punishable by imprisonment; or
 - (iii) the student's registration under the law of another country that provides for the registration of students has been suspended or cancelled.

Part 8 Health, performance and conduct

Division 2 Mandatory notifications

140 Definition of notifiable conduct

In this Division—

notifiable conduct, in relation to a registered health practitioner, means—

- (a) practising the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) engaging in sexual misconduct in connection with the practice of the practitioner's profession; or
- (c) placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (d) placing the public at risk of harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.

141 Mandatory notifications by health practitioners other than treating practitioners

- (1) This section applies to a registered health practitioner (the first health practitioner) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that—
 - (a) another registered health practitioner (the second health practitioner) has behaved in a way that constitutes notifiable conduct; or
 - (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2A) However, subsection (2) does not apply if the first health practitioner forms the reasonable belief in the course of providing a health service to the second health practitioner or student.
- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if—
 - (a) the first health practitioner—
 - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
 - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
 - (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
 - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or
 - (d) the first health practitioner—
 - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
 - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
 - (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.

141A Mandatory notifications by treating practitioners of sexual misconduct

- (1) This section applies to a registered health practitioner (the treating practitioner) who, in the course of providing a health service to another registered health practitioner (the second health practitioner), forms a reasonable belief that the second health practitioner has engaged, is engaging, or is at risk of engaging, in sexual misconduct in connection with the practice of the practitioner's profession.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (3) A contravention of subsection (2) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) This section applies subject to section 141C.

141B Mandatory notifications by treating practitioners of substantial risk of harm to public

- (1) Subsection (2) applies to a registered health practitioner (the treating practitioner) who, in the course of providing a health service to another registered health practitioner (the second health practitioner), forms a reasonable belief that the second health practitioner is placing the public at substantial risk of harm by practising the profession—
 - (a) while the practitioner has an impairment; or
 - (b) while intoxicated by alcohol or drugs; or
 - (c) in a way that constitutes a significant departure from accepted professional standards.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (3) Subsection (4) applies to a registered health practitioner (also the treating practitioner) who, in the course of providing a health service to a student, forms a reasonable belief that the student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (4) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the student's impairment.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

- (5) In considering whether the public is being, or may be, placed at substantial risk of harm, the treating practitioner may consider the following matters relating to an impairment of the second health practitioner or student—
 - (a) the nature, extent and severity of the impairment;
 - (b) the extent to which the second health practitioner or student is taking, or is willing to take, steps to manage the impairment;
 - (c) the extent to which the impairment can be managed with appropriate treatment;
 - (d) any other matter the treating practitioner considers is relevant to the risk of harm the impairment poses to the public.
- (6) A contravention of subsection (2) or (4) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (7) This section applies subject to section 141C.

141C When practitioner does not form reasonable belief in the course of providing health service

- (1) This section applies if a registered health practitioner (the first health practitioner) forms a reasonable belief about—
 - (a) a matter, relating to another registered health practitioner (the second health practitioner), mentioned in section 141A(1) or 141B(1); or
 - (b) a matter, relating to a student, mentioned in section 141B(3).
- (2) For this Division, the first health practitioner is taken not to form the reasonable belief in the course of providing a health service to the second health practitioner or student if—
 - (a) the first health practitioner—
 - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and

- (ii) forms the reasonable belief about the matter as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
- (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the matter for the purposes of a legal proceeding or the preparation of legal advice; or
- (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the matter is an issue; or
- (d) the first health practitioner—
 - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
 - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
- (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the matter that forms the basis of the reasonable belief.

142 Mandatory notifications by employers

- (1) If an employer of a registered health practitioner reasonably believes the health practitioner has behaved in a way that constitutes notifiable conduct, the employer must notify the National Agency of the notifiable conduct.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2) If the National Agency becomes aware that an employer of a registered health practitioner has failed to notify the Agency of notifiable conduct as required by subsection (1), the Agency must give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred.
- (3) As soon as practicable after receiving a report under subsection (2), the responsible Minister must report the employer's failure to notify the Agency of the notifiable conduct to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.
- (4) In this section—

employer, of a registered health practitioner, means an entity that employs the health practitioner under a contract of employment or a contract for services.

licensing authority, of an employer, means an entity that under a law of a participating jurisdiction is responsible for licensing, registering or authorising the employer to conduct the employer's business.

143 Mandatory notifications by education providers

- (1) An education provider must notify the National Agency if the provider reasonably believes—
 - (a) a student enrolled in a program of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the program of study, may place the public at substantial risk of harm; or
 - (b) a student for whom the education provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm;

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.]

- (2) A contravention of subsection (1) does not constitute an offence.
- (3) However, if an education provider does not comply with subsection (1)-

- (a) the National Board that registered the student must publish details of the failure on the Board's website; and
- (b) the National Agency may, on the recommendation of the National Board, include a statement about the failure in the Agency's annual report.

144 Grounds for voluntary notification

- (1) A voluntary notification about a registered health practitioner may be made to the National Agency on any of the following grounds—
 - (a) that the practitioner's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers;
 - (b) that the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the practitioner's health profession is, or may be, below the standard reasonably expected;
 - (c) that the practitioner is not, or may not be, a suitable person to hold registration in the health profession, including, for example, that the practitioner is not a fit and proper person to be registered in the profession;
 - (d) that the practitioner has, or may have, an impairment;
 - (e) that the practitioner has, or may have, contravened this Law;
 - (f) that the practitioner has, or may have, contravened a condition of the practitioner's registration or an undertaking given by the practitioner to a National Board;
 - (g) that the practitioner's registration was, or may have been, improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular.
- (2) A voluntary notification about a student may be made to the National Agency on the grounds that—
 - (a) the student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
 - (b) the student has, or may have, an impairment; or
 - (c) that the student has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board.

145 Who may make voluntary notification

Any entity that believes that a ground on which a voluntary notification may be made exists in relation to a registered health practitioner or a student may notify the National Agency.

[Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.]

Division 4 Making a notification

146 How notification is made

- (1) A notification may be made to the National Agency—
 - (a) verbally, including by telephone; or
 - (b) in writing, including by email or other electronic means.
- (2) A notification must include particulars of the basis on which it is made.
- (3) If a notification is made verbally, the National Agency must make a record of the notification.

Part 11 Miscellaneous

Division 1 Provisions relating to persons exercising functions under Law

237 Protection from liability for persons making notification or otherwise providing information

- (1) This section applies to a person who, in good faith—
 - (a) makes a notification under this Law; or
 - (b) gives information in the course of an investigation or for another purpose under this Law to a person exercising functions under this Law.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2)—
 - (a) the making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
 - (b) no liability for defamation is incurred by the person because of the making of the notification or giving of the information.
- (4) The protection given to the person by this section extends to—
 - (a) a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given; and
 - (b) a person who, in good faith, was otherwise concerned in the making of the notification or giving of the information.

Application of the exemptions of the National Law in Western Australia

141 Mandatory notifications by health practitioners

- (1) This section applies to a registered health practitioner (the first health practitioner) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that —
- (a) another registered health practitioner (the second health practitioner) has behaved in a way that constitutes notifiable conduct; or
 - (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

Note: See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if —
- (a) the first health practitioner—
 - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
 - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy;
 - or
 - (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
 - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or
 - (ca) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student; or
 - (d) the first health practitioner—
 - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
 - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information;
 - or
 - (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.