

## Mandatory Notifications - FAQ

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February 2020

### Mandatory notifications requirements

#### What is a mandatory notification and what changes have come into effect?

Under the National Law<sup>1</sup>, certain groups must make mandatory notifications about practitioners when their health, conduct or performance poses a risk to the public. There are four concerns that may trigger a mandatory notification. Depending on the type of concern, you must assess the risk of harm to the public when deciding whether to make a notification. The four concerns are:

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

Groups and individuals who may be required to make mandatory notifications are:

- treating practitioners (i.e. you become aware of the concern while treating the registered practitioner as your patient)
- non-treating practitioners (e.g. colleagues who are registered practitioners)
- employers of practitioners, and
- education providers (only in relation to registered students and impairment).

In early March 2020, changes will come into effect raising the threshold for when treating practitioners are required to make a mandatory notification in relation to impairment, intoxication or practice that significantly departs from accepted professional standards. However, a lower threshold for reporting applies for sexual misconduct. With the exception of sexual misconduct, a mandatory notification by a treating practitioner about their practitioner-patient is required only when there is a substantial risk of harm to the public. This is a very high threshold for reporting and is likely to be infrequent.

The changes only apply to when a treating practitioner must make a mandatory notification. There is no change to the reporting threshold for when non-treating practitioners or employers or education providers must make a mandatory notification.

To help explain the requirements for making a mandatory notification under the National Law, National Boards and Ahpra have developed [Guidelines: Mandatory notifications about registered health practitioners](#) and [Guidelines: Mandatory notifications about registered students](#) to help explain the reporting requirements, who has to notify us and how to do this. Please read these to find out more.

#### How are mandatory notifications managed by Ahpra?

A mandatory notification is managed by Ahpra in the same way as other notifications. For more detail on the notifications process, see [Concerns about practitioners](#) on the Ahpra website.

Notifications about students are managed in the same way as notifications about practitioners, so students should also refer to this information.

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<sup>1</sup> The Health Practitioner Regulation National Law Act, as in force in each state and territory

## Who should notify?

### **Do I need to make a mandatory notification?**

The National Boards and Ahpra and have developed guidelines and other resources to help you decide whether you need to make a mandatory notification.

After reading this information, 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 about raising a concern by calling Ahpra on 1300 419 495.

### **How do I work out whether I'm a treating or a non-treating practitioner?**

If you have treated another registered health practitioner as a patient, it is important to clarify if you are still in a treating relationship with the practitioner-patient. The circumstances for making a mandatory notification are more limited for a treating practitioner. This is to give a practitioner-patient the confidence to seek help if they need it without undue concern about a mandatory notification.

A treating practitioner is a practitioner who, while treating another practitioner, becomes aware of information that may trigger a mandatory notification. That is, the information is obtained while treating the patient. If you become aware of information about a practitioner-patient outside of the treating context, then the mandatory notification obligations of a non-treating practitioner may apply to you.

The [Guidelines: Mandatory notifications about registered health practitioners](#) set out information about who is a treating practitioner or non-treating practitioner for the purposes of a mandatory notification.

### **I am a member of a healthcare team who is treating a practitioner-patient, do I need to notify?**

If you are a treating practitioner as part of a healthcare team, you should communicate with the other treating practitioners in the team to discuss and seek advice about whether a mandatory notification is required and to find out if anyone else has made (or plans to make) a notification. If no-one else has made a mandatory notification, then you would be obliged to make one if the threshold for mandatory reporting is met. If another treating practitioner has made a mandatory notification, then you do not have to make one.

### **I am a preceptor or supervisor in a clinical setting, do I need to notify?**

Yes. If you are a registered practitioner, you are required to apply the mandatory notification guidelines relevant to registered practitioners or registered students.

## Exemptions

### **Are registered practitioners employed by an indemnity provider exempt from notifying?**

There are exemptions for registered health practitioners employed by a professional indemnity insurer in certain circumstances. The exemptions are set out in the National Law and the [Guidelines: Mandatory notifications about registered health practitioners](#) and [Guidelines: Mandatory notifications about registered students](#).

## Students and provisional registrants

### **How do registered students raise concerns about other students or practitioners?**

Registered students are not required to make mandatory notifications about other students or practitioners. Students (like anyone) may make a voluntary notification if they have concerns about a practitioner or student.

Students can also raise their concerns with a person or organisation that has obligations to make a mandatory notification.

### **Which guidelines apply to health practitioners who are also studying?**

A student is a person whose name is entered in a student register. If a registered practitioner is undertaking study in the *same profession* in which they are registered they are not registered as a student (for example an enrolled nurse studying to be a registered nurse), and the [Guidelines: Mandatory notifications about registered health practitioners](#) apply.

If a registered practitioner is undertaking study in a *different profession* than the profession in which they are registered, they are entered as a student in the student register (for example a dentist studying to be a medical practitioner). Therefore, if the identified concern is in relation to practice as a student, the [Guidelines: Mandatory notifications about registered students](#) would apply.

### **Which guidelines apply to a person with provisional registration?**

For the purposes of mandatory notifications, a provisionally registered practitioner is a registered practitioner and not a student. Therefore, the [Guidelines: Mandatory notifications about registered health practitioners](#) would apply.

This also applies to a person who holds provisional registration as a psychologist and is undertaking a postgraduate approved program of study or internship.

### **When does a 'substantial risk of harm to the public' arise for students?**

A mandatory notification is not required unless the student is undertaking clinical training.

If a student is not likely to have contact with the public in their clinical training in the foreseeable future, then there is minimal risk to the public arising out of clinical contact.

If the student is in contact with the public as part of their clinical training, or will soon have contact with the public, then, before making a notification, you must consider:

- whether there is a risk to patients or the wider community
- whether there is a substantial risk of harm, that is a real risk of a severe harm occurring
- whether the risk to the public can be managed through treatment or other strategies.

The [Guidelines: Mandatory notifications about registered students](#) set out factors that may assist you in assessing risk.

## Impairment

### **Is a mandatory notification automatically required for practitioners and students with mental ill-health resulting in a voluntary or involuntary admission? What about a drug affected admission/presentation or inpatient addiction treatment?**

No, a mandatory notification is not automatically required for any of these scenarios.

A decision to make a mandatory notification should be based on the risk to the public and other risks set out in the guidelines about practitioners and the guidelines about students.

### **Is a mandatory notification automatically required for practitioners or students with an infectious disease performing Exposure Prone Procedures (EPPs)?**

A person with an infectious disease (for example, a blood borne virus) who is performing EPPs does not necessarily require a mandatory notification.

A person who practises appropriately and safely in the light of their condition and complies with any registration standards or guidelines and professional standards and protocols would not trigger a mandatory notification.

A person who performs EPPs and does not comply with the relevant guidelines, standards or protocols may require a mandatory notification.

## Intoxication

### **Do I need to make a mandatory notification about a practitioner intoxicated outside of work?**

Intoxication outside of work does not trigger a mandatory notification unless:

- the practitioner has gone to work while still intoxicated, or
- the practitioner is on call. If a practitioner is on call, they are practising and should not be intoxicated.

## Departure from accepted standards of practice

### **What is a ‘significant’ departure from accepted professional standards?**

The term *significant* is not defined in the National Law. Decisions about what is a significant departure should be made by applying your professional judgement.

Factors to consider include that a significant departure:

- is serious, not slight or moderate
- would be obvious to a reasonable practitioner.

### **Do I need to make a notification about a practitioner using innovative practice?**

A mandatory notification would be required only in circumstances where a practitioner’s practice is a significant departure from accepted professional standards that places the public at risk of harm (or substantial risk of harm for treating practitioners).

Factors relevant to assessing the need to notify may include, practice context, controls such as oversight, incident reporting, attitude towards compliance with professional standards, and extent of harm.

### **Who can identify practice outside of accepted professional standards?**

The National Law requires non-treating practitioners and employers to make a mandatory notification about significant departures from accepted professional standards that place the public at risk of harm (or substantial risk of harm for treating practitioners).

Although a practitioner in the same profession or specialty may be in the best position to identify a significant departure from accepted professional standards, a practitioner from another profession or specialty may also be able to identify this, such as when:

- the breach is obvious, for example, falsifying informed consent in patient medical records
- the practitioner is part of a healthcare team where other members of the team can identify a breach of standards as the professions work together closely.

An employer may also receive information from a colleague or supervisor of a practitioner based on which they can form a reasonable belief that there is a significant departure from accepted professional standards. Employers should ensure that they do not use a mandatory notification as a performance or risk management tool.

### **What is substantial harm?**

The term substantial harm is not defined in the National Law. Decisions about risk of substantial harm should be made by applying your professional judgement.

Factors to consider include that a substantial harm is:

- severe or significant in size, it is not trivial
- it has occurred or is likely to occur
- based on knowledge, not guesses or speculation.

The type of harm may also be relevant, for example an injury to health or safety is more likely to result in a substantial harm than an economic injury.

To be substantial, injury may involve 'causing severe harm to a small number of people' or a 'small harm to many people'.

## Sexual misconduct

### **Should all sexual misconduct be reported?**

Yes. 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 the health profession.

### **What is meant by 'might' engage in sexual misconduct in the guidelines?**

The National Law requires a treating practitioner to make a mandatory notification if they think there is a risk of sexual misconduct by the practitioner in the future.

For example, a practitioner discloses a detailed plan to engage in grooming conduct with a patient.

Grooming is a process that involves developing a relationship with a person by building trust, often with gifts or promises, and the groomer (practitioner) asking for something in return which leads to sexual misconduct.

## Reasonable belief

### **Can you form a reasonable belief if you have not directly witnessed the behaviour or incident?**

You generally need direct knowledge (not just a suspicion) of the incident or behaviour that led to a concern to form a reasonable belief. As a practitioner or employer, you are most likely to form a reasonable belief when you directly observe the incident or behaviour.

If you do not have direct knowledge, it is best to encourage the person with the most direct knowledge of the incident or behaviour to consider whether to make a notification themselves.

However, in some circumstances if you have not directly witnessed the behaviour or incident but have received information from a reliable and trustworthy source, you have objectively assessed all surrounding circumstances, and your belief is well-founded given the facts and circumstances (not just suspicions), then you are able to form a reasonable belief.

For example, a 'reasonable belief' might be formed when:

- a patient or client states they have been in a sexual relationship with a health practitioner who was also their treating practitioner
- a student on a placement states that the practitioner fails to maintain adequate infection control processes and procedures (for example failing to sterilise reusable instruments and reusing single use items).