

## Health Insights

# AHPRA releases revised Guidelines for Mandatory Notifications about registered health practitioners

On 21 February 2020, the Australian Health Practitioner Regulation Agency (**AHPRA**) released revised guidelines in anticipation of changes to mandatory notification requirements coming into effect in March 2020.

The revised guidelines explain the requirements to make mandatory notifications under the updated legislative requirements for treating registered health practitioners, non-treating registered health practitioners, employers of registered health practitioners and education providers.

The revised guidelines set out:

- What concerns must be reported
- Who must make a notification
- How a notification is to be made
- Protections for practitioners when making a mandatory notification

The revised guidelines do not affect other legal mandatory reporting requirements, for example concerns about child abuse.

They also do not cover notifications concerning students, as separate guideline for notifications about students has been developed.

### What concerns must be reported?

A mandatory notification about a practitioner can be triggered by the following:

- Impairment;
- Intoxication while practising;
- A significant departure from accepted professional standards which places the public at substantial risk of harm; and
- Sexual misconduct.

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Before making a notification, the practitioner must form a “reasonable belief” about the incident or behaviour that has led to the concern. Speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

## Who must make a notification?

The revised guidelines categorise the groups who must make mandatory notifications about practitioners.

These groups are:

- Treating practitioners (ie. practitioners who are treating other practitioners);
- Non-treating practitioners (such as colleagues, co-workers, managers); and
- Employers of practitioners

**Treating practitioners** must report practitioners who:

- Are practising with an impairment and place the public at substantial risk of harm;
- Are practising whilst intoxicated by alcohol or drugs and place the public at substantial risk of harm;
- Are significantly departing from professional standards and place the public at substantial risk of harm; or
- Have engaged in, are engaged in or might engage in sexual misconduct connected to their practice.

**Non-treating practitioners** must report practitioners who:

- Are practising with an impairment and place the public at substantial risk of harm;
- Are practising whilst intoxicated by alcohol or drugs;
- Significantly depart from professional standards and place the public at substantial risk of harm; or
- Engage in sexual misconduct connected to their practice.

**Employers of practitioners** must report practitioners who:

- Are practising with an impairment and place the public at substantial risk of harm;
- Are practising whilst intoxicated by alcohol or drugs;
- Significantly depart from professional standards and place the public at substantial risk of harm; or
- Engaged in sexual misconduct connected to their practice.

Section 141(2) of the Health Practitioner Regulation National Law (**the National Law**) provides that a practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the notifiable conduct.

## Protections for Notifiers

The National Law protects any practitioner who makes a notification in good faith. Good faith is given its ordinary meaning of “well intentioned or without malice”.

Section 237 provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under the National 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.

A practitioner who makes a notification which is vexatious or not in “good faith” may be subject to regulatory action.

A notification should be made where there is personal knowledge of reasonably trustworthy facts or circumstances that would justify a person, acting in good faith, to believe that the concern and risk to the public exists.

The revised guidelines provide helpful examples of scenarios faced by each group of notifiers, to assist practitioners in determining whether a mandatory notification is to be made.

## Further information

Health practitioners should ensure that they have carefully read the revised Guidelines for Mandatory Notifications about registered health practitioners, which will come into force in March 2020.

For further information and assistance, contact AHPRA or your professional indemnity insurer.

**This article was written by Chandrika Darroch, Special Counsel. Please contact Chandrika if you have any questions or would like more information.**



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