

Health Insights

A cautionary note to all health practitioners: don't be caught out by section 130 of the National Law!

With increasing frequency in recent times, Meridian Lawyers is acting for registered health practitioners who have been the subject of investigation and/or disciplinary action for failure to comply with their obligation to notify their National Board of a 'relevant event'.

This article also serves to remind health practitioners and students¹ of their obligations to notify, explains what is a 'relevant event', and provides examples of the more common misconceptions that have resulted in disciplinary action for a failure to notify.

7 days to notify of 'relevant event'

The obligation to notify of a 'relevant event' is found in section 130 of the Health Practitioner Regulation National Law (**National Law**). It requires notification within 7 days of the practitioner or student becoming aware that a 'relevant event' has occurred.

What is a 'relevant event'?

Under s.130(3) of the National Law, a 'relevant event' occurs if:

1. a practitioner is charged with an offence punishable by 12 months imprisonment or more;
2. a practitioner is convicted of, or the subject of a finding of guilt for an offence, punishable by imprisonment;
3. a practitioner ceases to have appropriate professional indemnity insurance arrangements in place in relation to their practise of the profession;
4. a practitioner's right to practise at a hospital or another facility at which health services are provided is withdrawn or restricted because of the practitioner's conduct, professional performance or health;
5. a practitioner's billing privileges are withdrawn or restricted because of the practitioner's conduct, professional performance or health;
6. a practitioner's authority under a law of a State or Territory to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines is cancelled or restricted;

¹ A subset of obligations to notify of 'relevant events' applies to students under s130(3)(b) of the National Law.

7. a complaint is made about a practitioner to a Commonwealth, State or Territory authority², which is responsible for exercising registration functions or regulation similar to their Board; and
8. a practitioner's registration under the law of another country is suspended or cancelled or made subject to a condition or another restriction.

Notification of charges and convictions

The threshold for notification of charges is met if they are punishable by 12 months' imprisonment or more. We have found it is common for practitioners to erroneously believe that charges they face are for 'minor' offences and so assume that they are not punishable by 12 months imprisonment or more. Examples include common assault, fraud and drink driving charges. However, in Queensland:

- *common assault* is punishable by a term of imprisonment not exceeding 3 years;³
- *fraud* is punishable by a term of imprisonment not exceeding 5 years;⁴ and
- *drink driving* in the case of a second or subsequent offence within 5 years is punishable by 18 months imprisonment.⁵ The greater the number of prior offences within 5 years, the higher the potential term of imprisonment.

If practitioners are charged with any offence, we recommend they seek legal advice regarding the maximum penalty that might apply upon a finding of guilt, to ensure they know to comply with their obligation to notify their Board of the fact they have been charged within 7 days.

Convictions (whether recorded or not) must also be notified if the offence is punishable by any term of imprisonment. It is common in the above examples for the punishment to be light, such as a fine, a good behaviour bond or loss of driver's licence. In such cases it is understandable that practitioners might believe that because a term of imprisonment was not imposed, there is no obligation to notify. However, that is not correct. Whether imprisonment was imposed is not the threshold for notification. The relevant consideration is if a term of imprisonment could have been imposed. If imprisonment was open to the sentencing judge, then the obligation to notify is enlivened.

Appropriate professional indemnity insurance arrangements

In busy professional life, the renewal of professional indemnity insurance can be missed.

Common occasions when we have seen practitioners miss the renewal of their professional indemnity insurance include:

- upon return from an approved leave of absence (such as a sabbatical or extended leave);

² *Human Services (Medicare Act) 1973 (Cth); National Health Act 1953 (Cth); National Health Act 1953 (Cth); and Migration Act 1958 (Cth)*.

³ Section 335 of the *Criminal Code Act 1899 (Code)*.

⁴ Section 408C of the Code.

⁵ Section 79 of the *Transport Operations (Road Use Management) Act 1995*.

- upon return from maternity leave; and
- when direct debit authorities become out-dated, such as when credit cards are renewed or bank account details are changed.

The risk that arises from working with no professional indemnity insurance cover in place is something that cannot be under-estimated. Knowledge that appropriate insurance arrangements have lapsed is a trigger for notification of a 'relevant event' within 7 days, and failure to comply is cause for disciplinary action.

Practice/billing privileges

Health practitioners are granted the right to practise at hospitals or other facilities where health services are provided through credentialling. A practitioner's credentialling may be withdrawn or restricted because of their conduct, professional performance or health status. This may occur following internal investigations such as Root Cause Analysis into incidents, as a result of a practitioner's unsatisfactory performance or poor mental or physical health, including drug addictions. If the incident is serious enough for the hospital or another health care facility to withdraw or restrict the practitioner's credentials, the practitioner must notify their Board of this 'relevant event' within 7 days. This obligation also applies to temporary suspensions while an investigation into an incident is conducted. If a practitioner finds that their practising rights are withdrawn or restricted, they should contact their professional indemnity insurer and/or obtain legal advice as soon as reasonably practicable.

Medicare audits and reviews of a health practitioner's billing practices can result in the restriction of their billing privileges under the Medicare Benefits Scheme (**MBS**). This commonly arises if the practitioner's use of one or more MBS items exceeds the National average when compared to their peers during a specified billing period, as determined by Medicare. Medicare identifies this through monitoring and where anomalies are found, is likely to result in a Medicare audit and/or referral for a review of billing practices under the Practitioner Review Program (**PRP**) and the Professional Services Review (**PSR**) Agency.⁶ Any changes in billing rights (including the suspension of the use of specified item numbers) is a 'relevant event' requiring notification to their Board within 7 days.

Authority to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines is cancelled or restricted

All States and Territories require health practitioners to be authorised to administer, possess, prescribe, sell, supply or use scheduled medicines in connection with the practise of their profession. State and Territory regulatory bodies regularly audit and investigate practitioners whose practices may contravene statutory mandates, leading to their authority being cancelled or restricted. With the introduction of real time monitoring, such as QScript⁷ recently introduced in Queensland, offending practises may be automatically

⁶ Pursuant to the *Health Insurance Act 1973* (Cth).

⁷ <https://www.qscriptlearn.health.qld.gov.au>.

flagged and brought to the attention of the governing entity. If a health practitioner's prescribing, dispensing or otherwise dealing with scheduled medicines is investigated, legal advice should be sought straight away, as potential outcomes include the cancellation or restriction of the practitioner's authority. Such action is a 'relevant event', which must be notified to the practitioner's Board within 7 days.

Complaint made to a regulatory authority with similar functions to the Board

A health practitioner's obligations while providing their professional services extends beyond the most common regulatory bodies such as their Board under the National Law and auditors, the PRP and the PSR Agency under the *Health Insurance Act 1973* (Cth). Depending on the nature of professional services, health practitioners may have obligations while practising under legislation such as the *National Health Act 1953* (Cth), the *Migration Act 1958* (Cth), or any other State, Commonwealth and Territory Act with like regulatory powers. For example, the *Migration Act 1958* (Cth) requires that medical examinations, including by allied health practitioners such as psychologists, are often performed under challenging conditions, leading to higher likelihood of complaints. It is highly recommended that any health practitioner providing these, or like services under those or other relevant legislation, familiarise themselves with, and practise strictly in accordance with their obligations under those Acts. If a complaint is made to those regulators, the complaint constitutes a 'relevant event' for which practitioners must notify their Board within 7 days.

Registration overseas is suspended, cancelled or made subject to a condition or other restriction

With the world emerging from the COVID-19 pandemic, Australian health practitioners may be seeking out international destinations that require registration with foreign regulators. Equally, expats who stayed overseas during the pandemic, or overseas trained practitioners may be entering Australia and intending to practise their profession here. Most countries with a cohesive healthcare system have established regulatory bodies with similar functions to AHPRA and the National Boards. In the interest of the protection of the public in Australia, health practitioners intending to resume or commence working here must notify of any disciplinary action that has been taken against them in any overseas jurisdiction while practising there.

Failing to notify may result in disciplinary action

A health practitioner does not commit an offence if they fail to notify their Board of a 'relevant event' within 7 days. However, non-compliance with the requirement to notify may constitute behaviour for which health, conduct or performance (disciplinary) action may be taken. Depending on the circumstances, it is open to a health practitioner's National Board to find that, by not notifying of a 'relevant event' within the requisite timeframe, their conduct is or may be unsatisfactory. Under the National Law, the Board may refer the

practitioner to a responsible tribunal or a panel or otherwise take ‘relevant action’⁸ such as cautioning the practitioner or imposing conditions on their registration.

In an article published in 2020, we outlined a [number of disciplinary decisions that resulted from a breach of notification obligations](#).

How to notify of a ‘relevant event’

The AHPRA website⁹ contains a library of forms that are commonly used in the regulation and monitoring of compliance under the National Law. One such form is NOCE-00 ‘Notice of certain events’ form. If a practitioner is the subject of a ‘relevant event’ they can complete this form and return it to AHPRA by post, fax or email.

Meridian Lawyers regularly assists health practitioners to comply with the National Law. This article was written by Principal Scott Ames and Solicitor Daniel McCulloch. Please contact Scott Ames if you have any questions or for further information.



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⁸ Section 178(2)(a)–(d), National Law.

⁹ www.ahpra.gov.au.