

MANDATORY REPORTING

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A new national regime for mandatory reporting of health professionals will apply from 1 July 2010. The *Health Practitioner Regulation National Law* makes all health professionals liable to make mandatory reports in relation to the conduct of other health professionals.

For the first time, mandatory reporting requirements apply nationally. Additionally, it applies across the 10 health professions regulated under the new legislation (doctors, nurses, dentists, optometrists, osteopaths, pharmacists, physiotherapists, chiropractors, podiatrists and psychologists).

Mandatory reporting is not new. Existing legislation in Queensland and New South Wales requires mandatory reporting by doctors in relation to the conduct of doctors. However, the significant difference under the new law is that any health professional in the 10 professions may be required to report in relation to any other health professional.

NOTIFIABLE CONDUCT

The trigger for reporting is if "notifiable conduct" occurs. This is where a registered health practitioner:

- practices while intoxicated by alcohol or drugs;
- engages in sexual misconduct in connection with practice;
- places the public at risk of substantial harm in his or her practice because of impairment;
- places the public at risk of harm in his or her practice in a way that constitutes a significant departure from accepted professional standard.

WHEN TO REPORT

A registered health practitioner is required to report another registered health practitioner if the first person forms a reasonable belief, in the course of his or her practice, that notifiable conduct has occurred. That is, if you are a registered health practitioner you must report if you believe that another registered health practitioner has behaved in a way that constitutes notifiable conduct.

Under these circumstances you are required to notify the Australian Health Practitioner Regulation Agency (AHPRA) as soon as practicable. There is no set time limit, but clearly

reports of notifiable conduct should be made at the earliest practicable opportunity, once a reasonable belief has been formed that notifiable conduct has occurred.

Notification is also required in relation to students. Students, who are required to register under the new law, must also be notified if they are placing the public at substantial risk of harm because of impairment.

WHAT IF I DON'T NOTIFY

It is not an offence or criminal act if a health practitioner fails to make a mandatory report. However, the failure to make a mandatory report can be referred to the relevant Board for consideration as to whether the failure constitutes misconduct, and the relevant Board would decide what, if any, sanctions apply.

EXCEPTIONS

General exceptions apply to information which is obtained in the course of actions relating to insurance claims for professional indemnity insurers, if the information is obtained in relation to legal proceedings or providing assistance or advice in legal proceedings. An exemption applies for a health practitioner who is a lawyer, for providing legal assistance.

An exemption applies to registered quality assurance committees or bodies, registered under State or Territory legislation or under Commonwealth legislation. These statutory schemes provide statutory confidentiality for information obtained pursuant to the registered activities. If statutory confidentiality applies, then a mandatory report is not necessary.

A report is not required if a health practitioner knows or reasonably believes that AHPRA has already been notified in relation to the conduct. Thus if another health practitioner or the employer of the person involved has already notified AHPRA, then no further report is required.

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WHAT IS NOT EXCEPTED

There is no exception for information which comes to a health practitioner as a treating doctor or treating health professional or for information obtained in the course of a health program for health practitioners (unless the program is registered under the statutory schemes referred to above).

EMPLOYERS

If an employer reasonably believes that an employee health practitioner has behaved in a way that constitutes notifiable conduct, a mandatory report to AHPRA must be made. Many health professionals are not employees of hospitals or aged care facilities, and accordingly the report is only required in respect of health professionals who are employees.

If AHPRA becomes aware that an employer has failed to make a mandatory report, AHPRA is required to report that failure to the responsible State or Commonwealth Minister for consideration and action.

EDUCATION PROVIDERS

An education provider is required to notify in relation to its students, if the education provider reasonably believes that the public is at substantial risk of harm arising from impairment of the student.

VOLUNTARY NOTIFICATION

As with existing legislation, members of the public and health professionals can make voluntary notifications if they believe that there has been any misconduct or any cause of concern in relation to a health practitioner.

Voluntary notification can certainly be made for a range of expanded grounds, for example:

- any impairment of a health practitioner;
- conduct of a health practitioner that is of a lesser standard than expected;
- if the health professional is not a fit and proper person;
- if there is any legal contravention.

PROTECTION

Section 237 of the new law gives protection from civil, criminal or administrative process where a notification is made to AHPRA "in good faith". If a notification is made for malicious or vindictive purposes, this protection may be lost.

The protection would prevent any action for defamation, and the protection applies whether the notification to AHPRA is made on a mandatory or voluntary basis, so long as it is made "in good faith".

CAN I BE SUED IF I FAIL TO REPORT

There is some case law which suggests that if a person fails to make a mandatory report, which they are required to make, and other people are injured after that time, the injured parties could sue the person who failed to make a mandatory report. This issue is not clearly determined, but leaves open the question as to whether a civil claim of this nature could arise.

GENERAL

There is much more information regarding the new national registration and accreditation scheme on the AHPRA website <http://www.ahpra.gov.au>

AHPRA is also maintaining telephone advice lines during this period to assist all health professionals, employers and health bodies to understand their rights and responsibilities under the new scheme.

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