

## Guidelines for mandatory notifications

---



Dental  
Board of  
Australia

# Contents

---

Introduction	1
Who needs to use these guidelines?	1
Summary of guidelines	1
Guidelines for mandatory notifications	1
1. Introduction	1
2. General obligations	2
3. Notifiable conduct	2
4. Exceptions to the requirement of practitioners to make a mandatory notification	5
5. Mandatory notifications by education providers and practitioners in relation to impaired students	5
6. Consequences of failure to notify	5
7. How a notification is made (s. 146)	6
Attachment A	
Extract of relevant provisions from the <i>Health Practitioner Regulation National Law Act</i> as in force in each state and territory	7

### Introduction

These guidelines have been developed jointly by the national boards under s. 39 of the *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory. The guidelines are developed to provide direction to registered health practitioners, employers of practitioners and education providers about the requirements for mandatory notifications under the National Law.

The inclusion of mandatory notification requirements in the National Law is an important policy initiative for public protection.

The relevant sections of the National Law are attached.

### Who needs to use these guidelines?

These guidelines are relevant to:

- health practitioners registered under the National Law
- employers of practitioners
- education providers.

Students who are registered in a health profession under the National Law should be familiar with these guidelines. Although the National Law does not require a student to make a mandatory notification, a notification can be made about an impaired student.

### Summary of guidelines

These guidelines explain the requirements for practitioners, employers of practitioners and education providers to make mandatory notifications under the National Law to prevent the public being placed at risk of harm.

The threshold to be met to trigger a mandatory notification in relation to a practitioner is high. The practitioner or employer must have first formed a reasonable belief that the behaviour constitutes notifiable conduct or a notifiable impairment or, in the case of an education provider, a notifiable impairment.

Making a mandatory notification is a serious step to prevent the public from being placed at risk of harm and should only be taken on sufficient grounds. The guidelines explain when these grounds are likely to arise.

Importantly, the obligation to make a mandatory notification applies to the conduct or impairment of all practitioners, not just those within the practitioner's own health profession.

These guidelines also address the role of the Australian Health Practitioner Regulation Agency (the National Agency) as the body for receiving notifications and referring them to the relevant board.

### Guidelines for mandatory notifications

#### 1. Introduction

The National Law requires practitioners, employers and education providers to report 'notifiable conduct', as defined in s. 140 of the National Law, to the National Agency in order to prevent the public being placed at risk of harm.

These guidelines explain how the boards will interpret these mandatory notification requirements. They will help practitioners, employers and education providers understand how to work with these requirements; that is, whether they must make a notification about a practitioner's conduct and when.

The threshold to be met to trigger the requirement to report notifiable conduct in relation to a practitioner is high; and the practitioner or employer must have first formed a reasonable belief that the behaviour constitutes notifiable conduct.

The aim of the notification requirements is to prevent the public from being placed at risk of harm. The intention is that practitioners notify the Agency if they believe that another practitioner has behaved in a way which presents a serious risk to the public. The requirements focus on serious instances of sub-standard practice or conduct by practitioners or serious cases of impairment of students or practitioners; this is, behaviour that puts the public at risk of harm, rather than not liking the way someone else does something or feeling that they could do their job better.

#### Voluntary notifications

The National Law also provides for voluntary notifications for behaviour that presents a risk but does not meet the threshold for notifiable conduct (see ss. 144 and 145 of the National Law).

#### Protection for people making a notification

The National Law protects practitioners, employers and education providers who make notifications in good faith under the National Law. 'Good faith' is not defined in the National Law so has its ordinary meaning of being well-intentioned or without malice. S. 237 provides protection from civil, criminal and administrative liability, including defamation, for people making notifications in good faith. 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. These provisions protect practitioners making mandatory notifications from legal liability and reinforce that making mandatory notifications under the National Law is consistent with professional conduct and a practitioner's ethical responsibilities. Legally mandated notification

## Guidelines for mandatory notifications

requirements override privacy laws. Practitioners should be aware that notifications which are frivolous, vexatious or not in good faith may be subject to conduct action.

### 2. General obligations

The obligation is on any practitioner or employer who forms a reasonable belief that another practitioner has engaged in notifiable conduct to make a report to the National Agency as soon as practicable. The definition of 'notifiable conduct' is set out in s. 140 of the National Law and in Section 3 Notifiable conduct of these guidelines.

The mandatory notification obligation applies to all practitioners and employers of practitioners in relation to the notifiable conduct of all practitioners, not just those in the same health profession as the practitioner. It applies where the notifying practitioner is also the treating practitioner for a practitioner, except in Western Australia (see Section 4 of these *Guidelines* for details: *Exceptions to the requirements of practitioners to make a mandatory notification*).

There is also a mandatory obligation for education providers and practitioners to report a student with an impairment that may place the public at substantial risk of harm.

While the mandatory reporting provisions in the National Law are an important policy change and are new to most practitioners, the duties covered in them are consistent with current ethical practice and professional obligations. In addition to their legal obligations with respect to mandatory reporting, practitioners are also under an ethical obligation to notify concerns about a practitioner, in accordance with the broad ethical framework set out in the health profession's code of conduct (see the code of conduct and the voluntary reporting provisions of the National Law).

There are some exceptions to the requirement for practitioners to notify the National Agency of notifiable conduct, which are discussed at Section 4 Exceptions to the requirement of practitioners to make a mandatory notification.

#### What is a reasonable belief?

For practitioners reporting notifiable conduct, a 'reasonable belief' must be formed in the course of practising the profession.

A reasonable belief requires a stronger level of knowledge than a mere suspicion. Generally it would involve direct knowledge or observation of the behaviour which gives rise to the notification, or, in the case of an employer, it could also involve a report from a reliable source or sources. Mere speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

A reasonable belief has an objective element – that there are facts which could cause the belief in a reasonable

person; and a subjective element – that the person making the notification actually has that belief.

A report should be based on personal knowledge of facts or circumstances that are reasonably trustworthy and that would justify a person of average caution, acting in good faith, to believe that notifiable conduct has occurred or that a notifiable impairment exists. Conclusive proof is not needed. The professional background, experience and expertise of a practitioner, employer or education provider will also be relevant in forming a reasonable belief.

The most likely example of where a practitioner or employer would form a reasonable belief is where the person directly observes notifiable conduct, or, in relation to an education provider, observes the behaviour of an impaired student.

#### What is 'the public'?

Several of the mandatory notification provisions refer to 'the public being placed at risk of harm'. In the context of notifications, 'the public' can be interpreted as persons that access the practitioner's health services or the wider community which could potentially have been placed at risk of harm by the practitioner's services.

### 3. Notifiable conduct

S. 140 of the National Law defines 'notifiable conduct' as where a practitioner has:

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

The following sections of the guidelines discuss these types of notifiable conduct, followed by the exceptions. The guidelines are only examples of decision making processes, so practitioners, employers and education providers should check the exceptions to make sure they do not apply. If a practitioner engages in more than one type of notifiable conduct, each type is required to be notified.

#### Practise while intoxicated by alcohol or drugs (s. 140(a))

The word 'intoxicated' is not defined in the National Law, so the word has its ordinary meaning. The boards will

## Guidelines for mandatory notifications

consider a practitioner to be intoxicated where his or her capacity to exercise reasonable care and skill in the practice of the health profession is impaired or affected as a result of being under the influence of drugs or alcohol.

The National Law does not require notification of a practitioner who is intoxicated outside the practice of his or her health profession, unless the intoxication triggers another ground for notification.

### Decision guide – notifying intoxication



**NOTE:** Voluntary notifications can be made.

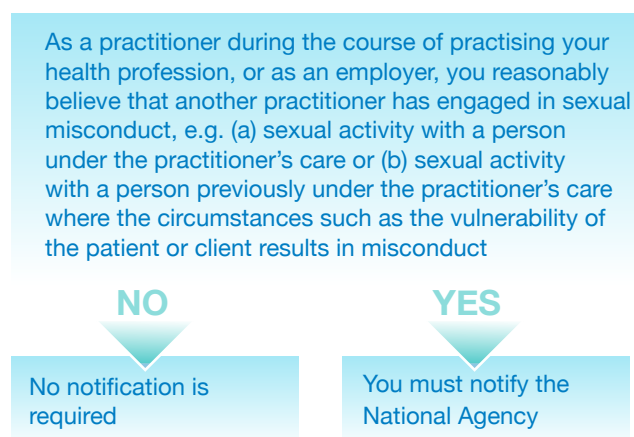
### Sexual misconduct in connection with the practice of the practitioner's profession (s. 140(b))

S. 140(b) relates to sexual misconduct in connection with the practice of the practitioner's health profession; that is, in relation to persons under the practitioner's care or linked to the practitioner's practice of his or her health profession. Engaging in sexual activity with a current patient or client will constitute sexual misconduct in connection with the practice of the practitioner's health profession, regardless of whether the patient or client consented to the activity or not. This is because of the power imbalance between practitioners and their patients or clients. Sexual misconduct also includes making sexual remarks, touching patients or clients in a sexual way, or engaging in sexual behaviour in front of a patient or client, etc. Engaging

in sexual activity with a person who is closely related to a patient or client under the practitioner's care may also constitute misconduct. In some cases, someone who is closely related to a patient or client may also be considered a patient or client; for example, the parent of a child patient or client.

Engaging in sexual activity with a person formerly under a practitioner's care (i.e. after the termination of the practitioner-patient/client relationship) may also constitute sexual misconduct. Relevant factors will include the vulnerability of the patient or client due to issues such as age, capacity and/or health conditions; the extent of the professional relationship; for example, a one-off treatment in an emergency department compared to a long term program of treatment; and the length of time since the practitioner-patient/client relationship ceased.

### Decision guide – notifying sexual misconduct



**NOTE:** Voluntary notifications can be made.

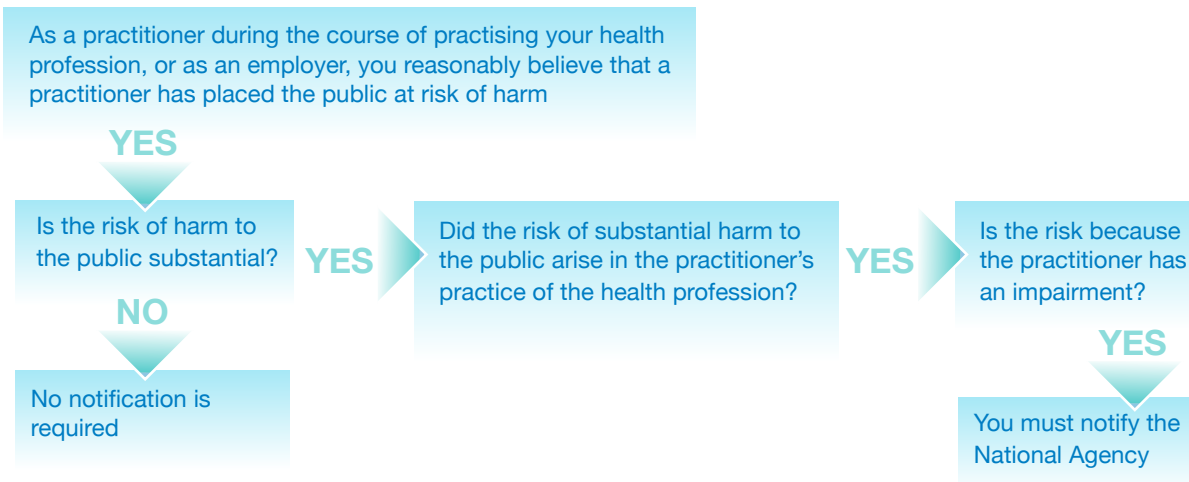
### Placing the public at risk of substantial harm because of an impairment (s. 140(c))

S. 5 of the National Law defines 'impairment' for a practitioner or an applicant for registration in a health profession as meaning a 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 the person's capacity to practise the profession.'

To trigger this notification, a practitioner must have placed the public at risk of substantial harm. 'Substantial harm' has its ordinary meaning; that is, considerable harm such as a failure to correctly or appropriately diagnose or treat because of the impairment. For example, a practitioner who has an illness which causes cognitive impairment so he or she cannot practise effectively would require a mandatory notification. However, a practitioner who has a blood borne virus who practises appropriately and safely in light of his or her condition and complies with

## Guidelines for mandatory notifications

### Decision guide – notifying impairment in relation to a practitioner



**NOTE:** Voluntary notifications can be made.

\* for notification of student impairment, please see Education Providers Section 6 of guidelines

any registration standards or guidelines and professional standards and protocols would not trigger a notification.

The context of the practitioner's work is also relevant. If registered health practitioners are aware that the employer knows of the practitioner's impairment, and has put safeguards in place such as monitoring and supervision, this may reduce or prevent the risk of substantial harm.

#### Placing the public at risk of harm because of practice in a way that constitutes a significant departure from accepted professional standards (s.140(d))

The term 'accepted professional standards' requires knowledge of the professional standards that are accepted within the health profession and a judgement about whether there has been a significant departure from them. This judgement may be easier for other members of the practitioner's health profession.

Mandatory notifications about a practitioner from another health profession are most likely to arise in a team environment where different health professions are working closely together and have a good understanding of the contribution of each practitioner; for example, a surgical or mental health team.

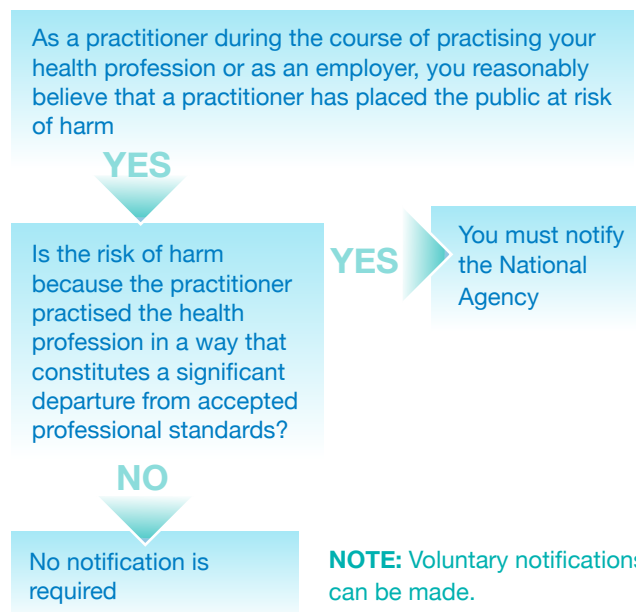
The difference from accepted professional standards must be significant. The term 'significant' means important, or of consequence (Macquarie Concise Dictionary). Professional standards cover not only clinical skills but also other standards of professional behaviour. A significant departure is one which is serious and would be obvious to any reasonable practitioner.

The notifiable conduct of the practitioner must have placed the public at risk of harm as well as being a significant departure from accepted professional standards before a notification is required. However, the risk of harm just needs to be present - it does not need to be a substantial risk, as long as the practitioner's practice involved

a significant departure from accepted professional standards. For example, a clear breach of the health profession's code of conduct which placed the public at risk of harm would be enough.

This provision is not meant to trigger notifications based on different professional standards within a health profession, provided the standards are accepted within the health profession; that is, by a reasonable proportion of practitioners. For example, if one practitioner uses a different standard to another practitioner, but both are accepted standards within the particular health profession, this would not qualify as a case of notifiable conduct. Similarly, if a practitioner is engaged in innovative practice but within accepted professional standards, it would not trigger the requirement to report.

### Decision guide – significant departure from accepted professional standards



### 4. Exceptions to the requirement of practitioners to make a mandatory notification

There are particular exceptions to the requirement to make a mandatory notification for practitioners. The exceptions relate to the circumstances in which the practitioner forms the reasonable belief in misconduct or impairment. They arise where the practitioner who would be required to make the notification:

- is employed or otherwise engaged; for example, a contractor by a professional indemnity insurer
- forms the belief while providing advice about legal proceedings or the preparation of legal advice
- is exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation which prohibits the disclosure of the information
- reasonably believes (refer to Section 2 *General obligations: What is a reasonable belief?* of these *Guidelines* for an explanation of reasonable belief) that someone else has already made a notification or
- is a treating practitioner, practising in Western Australia.

Practitioners in Western Australia are not required to make a mandatory notification about patients (or clients) who are practitioners or students in one of the health professions. However, practitioners in Western Australia continue to have a professional and ethical obligation to protect and promote public health and safety. They may therefore make a voluntary notification or may encourage the practitioner or student they are treating to self-report.

Practitioners should refer to *Attachment A* in these *Guidelines* for an extract of the relevant legislation; see s141(4) if it is possible one of these exceptions might apply.

### 5. Mandatory notifications by education providers and practitioners in relation to impaired students

Education providers are also required, under s.143 of the National Law, to make mandatory notifications in relation to students, if the provider reasonably believes:

- a student enrolled with the provider has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm
- a student for whom the 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.

Practitioners are required to make a mandatory notification in relation to a student if the practitioner reasonably believes that a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm (s.141(1)(b)).

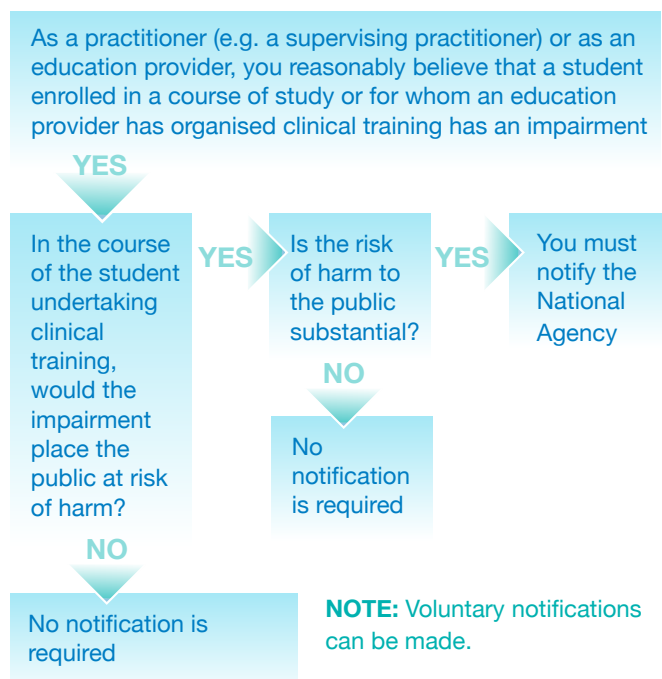
In all cases, the student's impairment must place the public at substantial, or considerable, risk of harm in the course of clinical training.

In relation to a student, 'impairment' is defined under s. 5 of the National Law to mean the student 'has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the student's capacity to undertake clinical training -

- as part of the approved program of study in which the student is enrolled; or
- arranged by an education provider.'

An education provider who does not notify the National Agency as required by s. 143 does not commit an offence. However, the national board that registered the student must publish details of the failure to notify on the board's website and the National Agency may, on the recommendation of the national board, include a statement about the failure in the National Agency's annual report.

#### Decision guide – student impairment



### 6. Consequences of failure to notify

#### Registered health practitioners

Although there are no penalties prescribed under the National Law for a practitioner who fails to make a mandatory notification, any practitioner who fails to make a mandatory notification when required may be subject to health, conduct or performance action.

#### Employers of practitioners

There are consequences for an employer who fails to notify the National Agency of notifiable conduct as required by s. 142 of the National Law.

If the National Agency becomes aware of such a failure, the National Agency must give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred. As soon as practicable after receiving such a report, the responsible Minister must report the employer's failure to notify to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.

Importantly, the requirement to make a mandatory notification does not reduce an employer's responsibility to manage the practitioner employee's performance and protect the public from being placed at risk of harm. However, if an employer has a reasonable belief that a practitioner has behaved in a way that constitutes notifiable conduct, then the employer must notify, regardless of whether steps are put in place to prevent recurrence of the conduct or impairment, or whether the practitioner subsequently leaves their employment.

### 7. How a notification is made (s. 146)

The National Law provides for notifications to be made to the National Agency, which receives notifications and refers them to the relevant board. The notification must include the basis for making the notification; that is, practitioners, employers and education providers must say what the notification is about. It may assist practitioners, employers and education providers in making a notification if they have documented the reasons for the notification, including the date and time that they noticed the conduct or impairment.

To make a notification verbally, practitioners, employers and education providers may ring 1300 419 495 or go to any of the State and Territory offices of the National Agency:

ACT	11 Torrens Street, Braddon, ACT 2612
New South Wales	Level 51, 680 George Street, Sydney, NSW 2000
Northern Territory	Level 2, Harbour View Plaza, Cnr McMinn and Bennett Streets, Darwin, NT 0800
Queensland	Level 18, 179 Turbot Street, Brisbane, Qld 4000
South Australia	Level 8, 121 King William Street, Adelaide, SA 5000
Tasmania	Level 12, 86 Collins Street, Hobart, Tas 7000
Victoria	Level 8, 111 Bourke Street, Melbourne, Vic 3000
Western Australia	Level 1, 541 Hay Street, Subiaco, WA 6008

To make a notification in writing, go to the *Notifications and Outcomes* section of the National Agency website at [www.ahpra.gov.au](http://www.ahpra.gov.au), download a notification form and post your completed form to AHPRA, GPO Box 9958 in your capital city.

**Date of issue:** 1 July 2010

**Date of review:** This guideline will be reviewed at least every three years

**Last reviewed:** 1 February 2011



### Attachment A

#### Extract of relevant provisions from the *Health Practitioner Regulation National Law Act* as in force in each state and territory

**s. 5** 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.

#### Part 5, 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.** 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 8, Division 2 Mandatory notifications

##### 140 Definition of notifiable conduct

In this Division—

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

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

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.

##### 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—

## Guidelines for mandatory notifications

- 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

### Application of National Law in Western Australia

#### Part 2, Section 4(7) Health Practitioner Regulation National Law (WA) Act 2010

In the Schedule after section 141(4)(c) insert:

141(4) (da) 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.

### 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

## Guidelines for mandatory notifications

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 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
  - 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.

### 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—
- 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;
  - 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;
  - 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;

- that the practitioner has, or may have, an impairment;
  - that the practitioner has, or may have, contravened this Law;
  - 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;
  - 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—
- 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
  - the student has, or may have, an impairment; or
  - 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.

## Part 8, Division 4 Making a notification

### 146 How notification is made

- (1) A notification may be made to the National Agency—
- verbally, including by telephone; or
  - 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, Division 1, section 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.