

# FAQ

## FREQUENTLY ASKED QUESTIONS



WEBINAR

## Mandatory Reporting of Colleagues

While nobody wants to find themselves in a situation where they must report a colleague for misconduct, you have a legal obligation to do so for notifiable conduct.

Equally stressful can be feeling unsure whether a colleague's behaviour constitutes mandatory reporting and angst about whether you may act unnecessarily.

This guide aims to answer frequently asked questions about what constitutes mandatory reporting and how to manage situations when the lines seem blurred.

### What is the legal framework around mandatory reporting?

If a registered health professional in the **course of practising his/her profession** forms a **reasonable belief** that another registered health professional has behaved in a way that constitutes **notifiable conduct**, they must notify Australian Health Practitioner Regulatory Agency (AHPRA) of notifiable conduct.

### What is the focus of mandatory reporting?

AHPRA guidelines state:

"... the requirements focus on 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."

"... if the only risk is to the practitioner alone, and there is no risk to the public, the threshold for making a mandatory notification would not be reached."

### What are the categories of notifiable conduct?

Conduct is notifiable if a practitioner has:

- Practised his/her profession while intoxicated by alcohol or drugs; or
- Engaged in sexual misconduct in connection with the practice of the practitioner's profession; or
- Placed the public at risk of substantial harm in the practice of the profession because he/she has an impairment; or
- Placed the public at risk of harm because he/she has practised in a way that constitutes a significant departure from accepted professional standards.

### What is reasonable belief?

- This should be formed when all known considerations are taken into account and objectively assessed.
- Requires a stronger level of knowledge than mere suspicion.
- Generally would involve direct knowledge or observation.
- Should be based on facts or circumstances that are reasonably trustworthy and would justify a person of average caution, acting in good faith, to believe that notifiable conduct had occurred.
- Conclusive proof is not needed.

### Can the lines be blurred for mandatory reporting if information about a colleague is obtained in social situations or within involvement in a community association?

Reasonable belief must be formed in the course of practising the profession. Information obtained outside the practice of the profession (e.g., in a social situation) will not trigger the mandatory reporting requirements.

### What should I do if it is not clear whether a colleague's conduct has crossed the threshold for mandatory reporting?

If you are unsure, ask yourself: Are the key elements present? Is the public at risk of harm? Has there been notifiable conduct? Do you have reasonable belief formed in the practice of your profession?

Seek advice from your MDO in relation to reporting.

# FAQ

## FREQUENTLY ASKED QUESTIONS

### Who is obliged to report notifiable conduct?

All practitioners and employers of practitioners in all registered health professions are obliged to report notifiable conduct.

People obliged to report notifiable conduct are not just those in the same health profession as the practitioner.

Even if you are the treating doctor for a practitioner who is guilty of notifiable conduct, you are obliged to report the conduct (except in Western Australia).

Education providers and practitioners must report a student with an impairment that may place the public at substantial risk of harm

### Can you still report notifiable conduct if you are not obliged to make a mandatory notification?

If you are not obliged to make a mandatory notification you may still wish to consider making a voluntary notification – consistent with your ethical obligations.

Visit <https://www.ahpra.gov.au/Notifications/mandatorynotifications/Mandatory-notifications.aspx>

AHPRA will not share your name or contact details with the person you are complaining about.

Even if you are not obliged to make a mandatory notification, you should consider what steps you can take to manage the situation to avoid risk to the public.

### What is the obligation of mandatory reporting?

- The obligation is to make a report to AHPRA as soon as practicable.
- Practicable has its ordinary meaning of “feasible” or “possible”.
- The notification must include the basis for making the notification.
- The notification can be made by phoning 1300 419 495 or in person at any state or territory AHPRA office.
- Notification can be made in writing by downloading a form from the AHPRA website and mailing to AHPRA.
- Contact your MDO if you are considering notifying.

### Are there exceptions to obligation to report notifiable conduct?

- Western Australia - a treating practitioner does not have to make a notification where reasonable belief is formed in the course of providing health services to a practitioner or student.
- Queensland - where the treating practitioner providing the health service reasonably believes that the notifiable conduct relates to an impairment which will not place the public at substantial risk of harm and is not professional misconduct.
- There is no obligation to report if you reasonably believe that someone else has made a notification.

#### EXAMPLE OF REASONABLE BELIEF:

- If you work in the private sector and you raise the matter with your supervisor.  
Note: You should follow-up to ensure that they intend to notify. Seek advice from your MDO. File note conversations. If you form the view that the supervisor is not going to notify, then you still have an obligation to notify.

### NOTIFICATION CATEGORY 1: Practitioner has practised their profession while intoxicated by alcohol or drugs

#### How is “intoxicated” defined?

“Intoxicated” has its ordinary meaning of “under the influence of alcohol or drugs”.

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

The issue is not when or where the drugs or alcohol were consumed, but that the practitioner has practised while intoxicated.

- The term “practised” could be construed loosely: once you are at work you could be regarded as practising.
- The national law does not require mandatory notification of a practitioner who is intoxicated when they are not practising. I.e., in their private life.

# FAQ

## FREQUENTLY ASKED QUESTIONS

### **NOTIFICATION CATEGORY 2: Practitioner has engaged in sexual misconduct in connection with the practice of the practitioner's profession**

#### **What is deemed sexual misconduct in connection with the practice of the profession?**

The Medical Board has provided guidelines in relation to sexual boundaries. In short, sexual misconduct covers a range of inappropriate behaviours, including:

- Sexualised behaviour.
- Sexual exploitation or abuse.
- Entering a sexual relationship.
- Sexual assault.
- Engaging in sexual activity with a current patient.
- This will constitute sexual misconduct even if consensual because of the power imbalance between the practitioner and their patient.
- Engaging in sexual activity with a person closely related to a current patient. E.g., a spouse, parent or sibling.
- Engaging in sexual activity with a former patient. E.g. a spouse, parent or sibling.
- Relevant factors will include the cultural context, vulnerability of the patient, extent of the professional relationship, length of time since the professional relationship ceased.
- Making sexual remarks, touching patients in a sexual way, engaging in sexual behaviour in front of a patient.

### **NOTIFICATION CATEGORY 3: Placing the public at risk of substantial harm because of an impairment**

#### **What defines impairment?**

- The national law defines impairment to mean 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 - considerable harm such as a failure to correctly or appropriately diagnose or treat because of the impairment.

### **NOTIFICATION CATEGORY 4: Significant departure from accepted professional standards**

#### **What defines significant departure from accepted professional standards?**

- Must place the public at risk of harm (this does not need to be a substantial risk).
- Must be a significant departure from accepted professional standards.

#### **When is it not considered a departure from accepted professional standards?**

- If one practitioner uses a different standard to another but both are accepted standards – no trigger for mandatory notification.
- A practitioner engaged in innovative practice but within accepted professional standards – no trigger for mandatory notification.

# FAQ

## FREQUENTLY ASKED QUESTIONS

### What are the consequences of failing to make a mandatory notification?

- A health practitioner who fails to make a mandatory notification when required to do so may be the subject of disciplinary proceedings.
- There are also consequences for an employer who fails to notify AHPRA of notifiable conduct if required.
- If AHPRA becomes aware of such a failure it must give a written report to the responsible Minister, who must notify a health complaints entity, the employer's licensing authority or other appropriate entity.

### Is it necessary for a health professional who makes a mandatory notification to demonstrate what steps they took to manage the situation before making their report?

In some circumstances, it will be appropriate to demonstrate you took action to manage the situation.

#### EXAMPLE

- You are a GP working in a medical centre and a patient tells you the following about your colleague, Dr X, who works in the same practice:
- Her sister said that Dr X kissed her on the lips.
- Her friend was concerned that Dr X tended to book pap smear appointments before the clinic was open in the morning.
- When notifying AHPRA it would be ideal to be able to demonstrate the steps you took to manage the situation. For example,
- You discussed these issues with the practice manager and the other three practice owners and put changes in place.
- Dr X will no longer text or call female patients directly.
- Dr X will not see women for women's health issues and will instead refer to female doctors in the practice.
- Dr X will not see patients before other practice staff arrive.

### Is there a law regarding voluntary notification?

The national law sets out circumstances where a complaint may be made about a registered health practitioner when the behaviour does not meet the threshold for mandatory notification, where the practitioner:

- Has been convicted or made the subject of a criminal offence.
- Has been guilty of unsatisfactory professional conduct or professional misconduct.
- Is not competent to practice the profession.
- Has an impairment.
- Is otherwise unsuitable to hold registration.
- Go to <https://www.ahpra.gov.au/Notifications/mandatorynotifications/Mandatory-notifications.aspx> to make a voluntary notification.

### Are health professionals who make a notification in good faith protected from prosecution?

The national law purports to provide protection from civil, criminal or administrative proceedings for people who make a notification in good faith.

However, a decision by the NSW Court of Appeal has clarified that there is no absolute privilege protecting practitioners who make a mandatory notification from civil proceedings.

As long as the report was made in good faith and without malice, then the national law provides a good defence in civil proceedings, but it does not prevent anyone from commencing litigation.

### Is there an obligation to disclose to patients that a practitioner has been the subject of a mandatory notification?

There is no obligation to inform patients. However, you should always consider what steps must be taken to fulfil your obligation.

You must immediately address the issues which are the subject of the notification. Contact your MDO for advice on risk management. You also have responsibility to allay any patient concerns.