

# National Registration and Accreditation Scheme for the Health Professions:

## What You Need to Know as an MDA National Member

**Dr Sara Bird**  
Manager, Medico-Legal and Advisory Services

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### Background

The National Registration and Accreditation Scheme for the Health Professions (the Scheme) was introduced in 2010 via the National Law.

The ten health professions to be covered by the Scheme are:

- Chiropractors
- Dental care practitioners
- Medical practitioners
- Nurses and midwives
- Optometrists
- Osteopaths
- Pharmacists
- Physiotherapists
- Podiatrists
- Psychologists.

The protection of the public is the key objective of the Scheme.

The Scheme is intended to:

- Provide greater safeguards for the public;
- Allow health professionals to move around the country more easily;
- Reduce the regulatory burden on health professionals;
- Promote a more flexible, responsive and sustainable health workforce; and
- Establish a national register for each health profession to ensure that a professional who has been banned from practising in one jurisdiction would be unable to practise in other Australian jurisdictions.

## New features of the Scheme

- Registration arrangements will include:
  - Compulsory professional indemnity insurance
  - Criminal history and identity checks
  - Compulsory continuing professional development.
- Complaints arrangements
  - The National Law includes disciplinary, health and performance pathways. However, some states and territories, such as NSW, will retain their existing complaints management provisions.
- The annual renewal date for all Australian medical practitioners will be 30 September.
- The new Medical Board of Australia will be based in Melbourne. The State and Territory Medical Boards will be retained as committees of the National Board.
- Mandatory reporting of colleagues will be introduced across all of the health professions included in the Scheme. All registered health practitioners will be legally required to report any other registered health practitioner who has behaved in a manner that constitutes 'notifiable conduct'. 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.

## What is notifiable conduct?

**Notifiable conduct** is defined in the National Law and means the 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.

**Impairment** is defined in the National Law as a person who 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 practice the profession'. It should be noted that the practitioner's impairment must place the public at risk of substantial harm for the threshold for mandatory notification to be met.

## Who is required to report notifiable conduct?

The Scheme imposes a duty to report notifiable conduct on all registered health practitioners and employers. This means that there is a legal obligation to report a registered health practitioner who the notifier, in the course of practicing their profession, has formed a 'reasonable belief' that the practitioner has behaved in a way that constitutes notifiable conduct.

It should be noted that the obligation to make a mandatory notification applies to the conduct or impairment of all registered practitioners, and not just those in the same health profession as the practitioner who is making the notification.

Education providers also have an obligation to make a mandatory notification in relation to students, if the provider reasonably believes a student who is enrolled with the provider, or who is undertaking clinical training 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.

## What is reasonable belief?

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. For practitioners reporting notifiable conduct, a reasonable belief must be formed in the course of practicing 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 gave rise to the notification. Mere speculation, rumours, gossip or innuendo are not enough to form a reasonable belief. However, conclusive proof is not needed. 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.

## How do I make a notification?

The National Law provides for notifications to be made to the Australian Health Practitioner Regulation Agency (the National Agency), which receives notifications and refers them to the relevant board. The notification should be made as soon as practicable and include the basis and the reasons for the notification; that is, practitioners, employers and education providers must say what the notification is about. Practitioners should document the reasons for the notification including the date and time that they noticed the conduct or impairment.

## Am I protected if I make a notification?

The National Law protects practitioners, employers and education providers who make notifications in good faith (well-intentioned or without malice). Protection is provided from civil, criminal and administrative liability, including defamation, for practitioners making notifications in good faith. Making a notification is not a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct.

## Are there exceptions to the requirement of practitioners to make a mandatory notification?

There are particular exceptions which relate to the circumstances in which the practitioner forms the reasonable belief about notifiable conduct. Exceptions to the requirement of practitioners to make a mandatory notification include where the practitioner:

- is employed or otherwise engaged by a professional indemnity insurer. That is, medical practitioners who are employed or engaged by MDA National are exempted from the obligation to make a mandatory notification
- is exercising functions as a member of a quality assurance committee, council or other body which prohibits the disclosure of the information
- reasonably believes that someone else has already made a notification.

Also, in WA only, practitioners are exempted from the reporting requirements in the course of providing health services to other health practitioners or students.

Members are encouraged to contact MDA National for advice in any of these situations.

## What happens if I fail to make a notification?

There are no penalties prescribed under the National Law for a practitioner who fails to make a mandatory notification; however, a practitioner who fails to make a mandatory notification when required to do so may be subject to action by their registration board.

There are consequences for an employer who fails to notify the National Agency of notifiable conduct. 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. The 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.

## Find Out More

Members are encouraged to seek advice from MDA National by calling the medico-legal advice line on 1800 011 255 if they are unsure about their obligations in a particular situation, or uncertain about whether to make a notification.

Further information about the National Registration and Accreditation Scheme for the Health Professions is available at:

- Australian Health Practitioner Regulation Agency website: [www.ahpra.gov.au](http://www.ahpra.gov.au)
- Detailed guidelines on mandatory notification are available on the Medical Board of Australia's website: [www.medicalboard.gov.au](http://www.medicalboard.gov.au)

**Dr Bird represented MDA National in the National Registration stakeholder meetings in relation to the proposed legislation.**



**Freecall: 1800 011 255**  
[www.mdanational.com.au](http://www.mdanational.com.au)

**Registered Office:** MDA National, Level 3, 516 Hay Street, SUBIACO WA 6008 **Phone:** (08) 6461 3400 **Fax:** (08) 9415 1492

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