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*This is a question we get asked all the time. The short answer is that, under the National Law, the notifier is protected from a defamation claim where a notification is made in good faith.<sup>1</sup>*

## Background

Recently the Queensland Court of Appeal looked at this issue.<sup>2</sup> In that case, the doctor was a locum psychiatrist and his employment was terminated following a complaint letter from junior doctors at the Hospital regarding his performance.

A notification was made to the Health Ombudsman, pursuant to the National Law<sup>3</sup>, which resulted in an investigation by the AHPRA. AHPRA concluded that it would take no further action against the doctor. He subsequently sought to commence defamation proceedings against the Hospital and notifier. However, the one-year limitation period to bring the claim had passed.

At the initial trial, the judge extended the limitation period on the basis that it was not reasonable in Dr Akbari's circumstances to have commenced an action within a year of the notification. However, the Court only extended the limitation period to a date that

preceded the commencement of proceeding on the basis that the claim was bound to be unsuccessful as the Hospital and notifier enjoyed an absolute privilege in relation to that notification. Dr Akbari appealed arguing that the judge erred in holding that there was an absolute privilege.

On appeal, the Court held that a notification made under the National Law did not attract an absolute privilege, but a qualified privilege. Consequently, in order to rely upon that privilege as a defence in a defamation case, it will need to be shown that the notification was made in good faith.

## What is absolute or qualified privilege?

Absolute privilege is a legal privilege that attaches to all statements made in the course of judicial and quasi-judicial proceedings (such as in tribunals) so there can be no action for defamation even if the words were published with a malicious motive or were false. A qualified privilege only applies if the defendant has not acted with actual malice.

## What does this all mean?

The National Law provides for a defence of qualified privilege to parties making notifications to AHPRA. This means that a person making a notification is immune from a defamation claim where they have acted in good faith and they will not be liable (civilly, criminally or under an administrative process) for making the notification or giving information. Further, the making of the notification or giving of information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct. The National Law would not protect a person who had acted in bad faith or with malice.

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## References

<sup>1</sup>Section 237 *Health Practitioner Regulation National Law (WA) Act 2010*

<sup>2</sup> *Akbari v State of Queensland & Anor* [2022] QCA 74

<sup>3</sup> section 141 *Health Practitioner Regulation National Law Act 2009 (Qld)*

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