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Consultation - Guidelines for mandatory notifications

Avant welcomes the opportunity to provide input into AHPRA's consultation on the guidelines for mandatory notifications about registered health practitioners and health students.

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 76,500 healthcare practitioners and students around Australia.

General comments

We would like to commend AHPRA for the way it has conducted this consultation, and for giving us the opportunity to provide input at various stages throughout the process. We hear from our members on almost a daily basis about issues regarding mandatory notifications. We can see the input our feedback has had on the development of the guidelines, which is important because of the professional and personal effects mandatory reporting laws can have on doctors across the country.

In the past we have advocated for an exemption for treating practitioners from mandatory reporting obligations, as currently exists in Western Australia.
While we continue to prefer that position, we recognise that the recent change to the law is a step in the right direction. We are committed to supporting our members and all health practitioners to seek treatment for their health conditions, and to ensure that mandatory reporting laws are used appropriately.

We are committed to helping our members and the profession understand their obligations by raising awareness of these guidelines and AHPRA's messages.

The draft guidelines

Overall, we are satisfied with the draft guidelines for both registered health practitioners and health students. We agree with the National Boards that Option two, publishing the proposed revised guidelines (pending any changes which arise from this consultation), is the best option.

The revised draft guidelines improve the overall readability and accessibility of the information about mandatory notifications. They provide greater clarity and guidance to potential notifiers to help them decide whether they are required to make a mandatory notification.

We have already provided detailed and specific feedback on the guidelines to AHPRA. On a general level we provide the following feedback:

Junior doctors – It would be helpful to provide scenarios which depict the unique challenges of junior doctors. There are reported cases of junior doctors adjusting to the pressures of the medical profession and seeking help for stress and other illnesses but not feeling supported by the profession. There are media reports which describe junior doctors as not being impaired (using the standard set by the legislation) nor putting the public at harm, but treating practitioners inferring that they are required to report the practitioner patient. A focus on this segment, through examples, would assist treating-practitioners to better understand their reporting obligations, and also encourage junior doctors to seek treatment when needed.

Explanation of intention – Mandatory reporting is a barrier for practitioners seeking medical treatment when needed. It is pleasing that AHPRA has acknowledged this as an unintended consequence of the law and emphasised that, especially with the recent amendments, the intention is that practitioners do seek treatment when they are unwell. Messaging such as: *"A health condition and impairment are not the same thing"* and *"…if it* [impairment] *poses only a low risk of harm to their patients, it does not trigger a mandatory notification"* is useful. It illustrates when impairments are required to be notified, assisting treating practitioners with their mandatory notification obligations. These messages are also reassuring to patient practitioners that not all impairments are reportable.

Significant departure from professional standards – It is pleasing to read that *"Different clinical decision-making or treatment approaches also do not trigger mandatory notification…"* It is our experience that doctors are concerned that this type of notifiable conduct is used to make inappropriate reports, based mainly on competition or personal differences between practitioners. Explicitly stating that 'different treatment approaches' themselves do not constitute notifiable conduct, should assist practitioners to understand when it is not appropriate to make a mandatory report.

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Please contact me on the details below if you require any further information or clarification of the matters raised in this letter or our previous feedback.

Yours sincerely,

[redacted]
Head of Advocacy, Research and Education

[redacted]

Guidelines – Mandatory notifications about registered health practitioners

1. Page 3 - Under 4, consider changing the first sentence as it is not immediately clear what a non-treating practitioner is. Or breaking it into two sentences. For example, 'This advice is for practitioners who have a concern about another practitioner. For example, a colleague. Your concern must not have come from being in a treating-relationship with that other practitioner. Please read it alongside sections 1 and 2.'

2. Page 4 - Under 1.1, in the last paragraph, consider adding 'you may wish to seek advice from your insurer or other legal advisor on specific circumstances'.

3. Page 4 - the last paragraph ends in 'see' but ends prematurely.

4. Page 5 - Consider highlighting (by putting in a box or another technique) the sentence:

   If AHPRA or a National Board receives a mandatory notification, the Board will consider all relevant information before deciding if action is needed to protect the public. It will not automatically take regulatory action.

   We have had feedback that people who make reports would like a better understanding of the process after the report is made. We have also had feedback that potential reporters are apprehensive to make reports if they 'have got it wrong' and the behaviour/impairment is not of the type that should be reported. This would give them comfort to know that the risk will be assessed before regulatory action is taken.

5. Page 5 – The page numbers in the table which are meant to link treating practitioners to information about impairment, intoxication, departure from standards and sexual misconduct are **incorrect**. "See page 1", 3, 5 and 17 should be "See page 12", 14, 16, 18.

6. Page 6 – The page numbers in the table which are meant to link non-treating practitioners to information about impairment, intoxication, departure from standards and sexual misconduct are **incorrect**. "See page 18", 21, 21 and 24 should be "See page 19", 22, 22, 24.

7. Page 6 – The page numbers in the table which are meant to link employers to information about impairment, intoxication, departure from standards and sexual misconduct are **incorrect**. "See page 24", 27, 27 and 29 should be "See page 25", 28, 28, 30.

8. Page 7 - Under 1.5, consider clarifying exactly what sorts of committees have this privilege or make a reference to the fact that committees would apply for this privilege, so that it is not confused with any quality assurance bodies, groups or committees in medical environments, such as hospitals.

9. Page 7 - Under 1.5, it is unclear that whether a treating practitioner whose PPP is in Western Australia must make a mandatory report about a practitioner who resides in another state but may be treated via telehealth.

10. Page 7 - Under 1.5, second paragraph, first sentence, there are two full-stops.

11. Page 7 - Under 1.5, second paragraph, last sentence, consider adding 'if appropriate' after 'are treating to self-report'.

12. Page 9 - Under 2.3, consider highlighting (by putting in a box or another technique) the sentence:

> **A health condition and impairment are not the same thing. An illness or condition that does not have a detrimental impact on a practitioner's capacity to practise is not an impairment.**

13. Page 9 - Under 2.3, 'section 0' should read 'section 3'.

14. Page 9 - Under 2.4, consider: The word 'intoxicated' is not defined in the National Law, so it has the ordinary meaning of 'under the influence…'

15. Page 9 - Under 2.5, first sentence, change 'means' to 'includes' because it does not only mean 'code of conduct'.

16. Page 11 – consider moving the final paragraph to the top of the section, so practitioners from Western Australia understand that this section does not apply to them. Rather than have them read the entire section and if they get to the end realise it does not apply to them.

17. Page 12 – Under 3.2, given the push and focus on the health of junior doctors, the examples should one about a junior doctor experiencing mental illness (perhaps due to the stresses of study and work), but does not pose a substantial risk of harm to the public, and ultimately does not need to be reported.

18. Page 13 - In flow chat, consider adding a hover-over call out box to the words 'voluntary notification' to explain what this means as until this point in the Guidelines, it is only mentioned very briefly. Even a sentence that states 'this is another form of reporting, and for more information visit *www.ahpra/voluntarynotificaiton*'

19. Page 18 - the example under 3.5, if 'future sexual misconduct' could include any other scenarios consider including them. We have had feedback that this is the 'obvious' example, and if the law intends to include more than obvious grooming, then treating-practitioners need more examples of this. For example, would this include a doctor who practices in a rural area, and starts to date a sibling of a patient?