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Mr Nick Lord
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Dear Mr Lord

MIGA submission – Guidelines for mandatory notifications review

1. MIGA appreciates the invitation to contribute further to the consultations by AHPRA and the National Boards on the *Guidelines for mandatory notifications* review.

MIGA's position

2. Overall MIGA is generally supportive of the latest versions of the draft revised guidelines.
3. It has appreciated the engagement by AHPRA with both it and other key professional stakeholders on both the draft revised guidelines and the associated awareness and education initiatives. It looks forward to this engagement continuing, including on whether there are ongoing, new or emerging challenges around mandatory notifications as treating practitioner mandatory reporting reforms take effect, and as final revised mandatory notification guidelines are implemented.
4. MIGA is pleased by the changes to the latest drafts of the mandatory notifications guidelines relating to both practitioners and students, which reflects feedback it has already provided, including
 - Clearer demarcation around what parts of the guidelines apply to each of non-treating practitioners, treating practitioners and employers / engaging entities
 - Improved explanation of notification thresholds – it is particularly encouraged to see the use of 'factor charts' with low / high risk ranges for impairment, intoxication and significant departure from accepted professional standards, which is an important move away from the more problematic language used in the initial draft around notification thresholds
 - Inclusion of factors to consider when determining whether a mandatory notification is required in relation to issues of intoxication or significant departure from accepted professional standards for treating practitioners. In addition the appropriate factors should also be included for non-treating practitioners around significant departures from professionals standards
 - References to other relevant professional guidelines
 - Inclusion of additional examples of potential mandatory notification scenarios, which are very helpful.
5. MIGA is encouraged that the draft guidelines should be finalised before the treating practitioner mandatory reporting reforms commence. The reforms should not commence until the final guidelines are available.
6. It also welcomes the intended introduction of a mandatory reporting hub on the AHPRA website and use of various expert perspectives, particularly in videos.
7. MIGA's comments on the revised draft guidelines focus on residual concerns involving
 - Challenges for treating practitioners in assessing risk of sexual misconduct by a practitioner patient
 - Issues with individual provisions in the revised draft guidelines.

Challenges posed by sexual misconduct mandatory notification

8. In MIGA's submission on the initial revised draft guidelines, concerns were detailed around a lack of clarity on how to determine whether a practitioner patient "*is at risk of engaging in*" sexual misconduct.
9. The mention of professional material that can be referred to in assessing whether a mandatory notification is required, as sought by MIGA, is helpful but remains insufficient. For instance the relevant guidelines from the Medical Board of Australia, *Sexual boundaries in the doctor-patient relationship*, focus on clarifying what sexual misconduct is. They do not deal with how a practitioner is to assess the risk of it occurring in any meaningful way.
10. MIGA remains concerned about treating practitioners being left in difficult situations where there is little guidance and where a wide range of views about what constitutes a future risk of sexual misconduct are possible.
11. It is encouraged to see that AHPRA is engaging with psychiatrists and psychologists around mandatory reporting generally. It would like to see those engagements address issues around threshold for reporting sexual misconduct, including development of appropriate case studies and expert guidance.
12. As sought in MIGA's earlier submission, there should also be guidance factors in the draft practitioner guidelines for treating practitioners around assessing the risk of engaging in sexual misconduct. These may include matters such as
 - Nature of practice
 - Degree of contact with 'at risk' groups
 - Range and nature of potential warning signs
 - Practitioner patient's state of mind, including degree of insight
 - Extent to which the risk is being, or can be, removed through various safeguards or other steps.
13. There is a need for further examples in the draft practitioner guidelines around sexual misconduct. This should include both circumstances of reporting and not reporting, particularly ones where the threshold for reporting may not be as clear as it would be for things such as grooming behaviour.

Draft practitioner and employer guidelines – individual provisions

14. MIGA recommends the following changes to individual provisions of the draft practitioner and employer guidelines

Generally

- In the online version of the final guidelines it would be helpful to hyperlink key words and phrases (such as treating practitioner, non-treating practitioner, employer, impairment, intoxicated, sexual misconduct, reasonable belief, substantial risk of harm and risk of substantial harm) and references to both other sections of the guidelines and other materials to the relevant section in the guidelines, or to the relevant material elsewhere

Executive Summary

- It would be helpful to incorporate key messages from the foreshadowed awareness and education campaign by AHPRA and the National Boards into the executive summaries of the final guidelines, which should include
 - o Seek the help you need – a physical or mental health condition rarely triggers a mandatory notification
 - o Error does not equal mandatory notification
 - o A mandatory notification does not equal suspension from practice or end of career
 - o If in doubt about whether to report, speak to appropriate colleagues or your professional indemnity insurer
 - o Treating practitioners have a very high threshold for a mandatory notification – it is highly likely you won't need to make a mandatory notification
 - o For employers, mandatory notification is not substitute for or a form of performance management

- **Section 1, Mandatory notification requirements**
 - **First paragraph** – reword to read “*To protect the public from ~~the risk of~~ harm, registered health practitioners and their employers must report **certain serious** concerns about other practitioners*” – this avoids misapprehensions that mandatory notification is required when there is any risk of harm / concerns about other practitioners
 - **Second paragraph** – reword to read “*In these cases, practitioners, employers or members of the public can choose to make a voluntary notification **if they feel this to be necessary***” – to deal with any misunderstanding that there may still be an expectation, instead of option, to make a voluntary notification. A range of consistent changes proposed for similar provisions in both sets of draft guidelines are set out below
- **Section 2, Concerns to report – first and third bullet points** – reword to read
 - *Impairment (a health condition detrimentally affecting practice) posing a specific level of risk to the public*
 - *Significant departure from accepted professional standards posing a specific level of risk to the public*

Without these clarifications the summary may be mistakenly relied on to perpetuate misunderstandings around mandatory reporting thresholds on the grounds of impairment or significant departures from accepted professional practices. The proposed wording is an attempt to capture the different thresholds for various mandatory reporters. A range of consistent changes proposed for similar provisions in both sets of draft guidelines are set out below
- **Section 3, Guideline for treating practitioners, second paragraph, third sentence** – reword to read

*Treating practitioners ~~with a principal place of practice (PPP)~~ **providing health care** in Western Australia are exempt from this requirement. **They still have mandatory notification obligations outside the treating or therapeutic relationship involving non-patient practitioners** ~~but may still be obliged to make a notification as a non-treating practitioner~~*

 - MIGA does not believe the *Health Practitioner Regulation National Law (WA)* limits the exemption for treating practitioner reporting to practitioners with a principal place of practice in Western Australia. Instead it applies to any treating practitioner providing health services to another registered practitioner in Western Australia
 - The current draft wording around remaining mandatory notification obligations outside the therapeutic relationship is potentially confusing. It could be misread as an obligation to report from the perspective of a non-treating practitioner ‘looking on’ at the practitioner’s conduct
 - A range of consistent changes proposed for similar provisions in both sets of draft guidelines are set out below

Section 1 – Mandatory notification requirements

- **Section 1.1, What do these guidelines cover?**
 - **First paragraph** – change to read “*Under the National Law, certain groups must make mandatory notifications about practitioners when their health, conduct or performance poses a **specific level of risk to the public***”
 - **Third paragraph** – add new third sentence “*You may also choose to speak with appropriate colleagues, your professional indemnity insurer or legal advisor about specific circumstances or mandatory notification requirements more generally*” – this is to set out potential sources of advice, and reinforce to practitioners they can seek advice in these situations. A range of consistent changes proposed for similar provisions in both sets of draft guidelines are set out below
 - **Fifth paragraph** – change third sentence to read “*For example, students may place the public at a **specific level of risk of harm which is notifiable** by undertaking clinical training with an impairment*”
- **Section 1.2, Who should make a mandatory notification?**
 - **Second paragraph** – change to read “*Other people do not have to make a mandatory notification, but they can raise concerns through a voluntary notification **if they feel this to be necessary***”

- **Table, Types of risks and reporting thresholds for different groups, treating practitioners reporting sexual misconduct** – change threshold to read “*have engaged in, are engaging in or at risk of engaging* ~~might engage in sexual misconduct connected to their practice~~” – use of the term ‘might’ could be interpreted as a lower threshold than ‘risk’
- **Section 1.5, What doesn’t need to be reported?**
 - **First paragraph, first bullet point** – add “*are employed or engaged by a professional indemnity insurer*” to list of practitioners not required to make a mandatory notification
 - **Second paragraph**
 - **First sentence** – reword to read “*Treating practitioners **providing health care with a principal place of practice (PPP)** in Western Australia do not have to make a mandatory notification when, ~~while~~ providing health services to a health practitioner or student*”
 - **Final sentence** – reword to read “*...so they might either make a voluntary notification or encourage the practitioner or student they are treating to self-report **if they consider this necessary***”

Section 2 – Concerns to report

- **Section 2.2, What is reasonable belief? – third paragraph, final sentence** – reword to read “*...to believe that the concern and **the necessary degree of a risk to the public exists***”
- **Section 2.3, What is impairment? – final paragraph, second sentence** – reword to read “*You would make a mandatory notification about a student with an impairment only if, while they undertake clinical training, the public is placed at **substantial risk of harm***”
- **Section 2.5, What is a significant departure from accepted professional standards? - second paragraph, first sentence** – reword to read “*If a practitioner’s practice shows a significant departure from professional standards that places the public at **the necessary degree of risk of harm**, it can trigger a mandatory notification*”
- **Section 2.6, What is sexual misconduct?** - the Medical Board of Australia’s guidelines, *Sexual boundaries in the doctor-patient relationship*, and commensurate guidelines produced by other professional boards should be listed, with hyperlinks in the online version of the guidelines

Section 3 - Guideline for treating practitioners

- **Section 3.1, What are my obligations?**
 - **First paragraph**
 - The thresholds set out for mandatory reporting for impairment, intoxication and significant departures from accepted professional standards fail to include the element of ‘substantial risk of harm’, suggesting this is not required for a mandatory report. The thresholds need to be included. Reading this paragraph in conjunction with the next paragraph, setting out the thresholds, is insufficient where the first paragraph sets out the grounds for reporting as complete obligations, without need to consider more in the following paragraph
 - The sexual misconduct ground for reporting reflects that for non-treating practitioners, not treating practitioners – “*engaged or is at risk of engaging in sexual misconduct*” – this should be corrected
 - **Last paragraph, first sentence** – reword to read – “*If you are a treating practitioner **providing health care with a principal place of practice (PPP)** in Western Australia, you do not need to make mandatory notifications about a practitioner who is your patient*”
- **Section 3.2, When must I report impairment?**
 - **Add new second paragraph** – “*A health condition and impairment are not the same thing. A health condition needs to have a detrimental impact on a practitioner’s capacity to practice to be an impairment. See section 2.3 for more information.*” - this reduces the chance of misunderstanding around impairment

- **Treating practitioner: Impairment flowchart**
 - No notification box – change to read “*If the condition does not have a detrimental effect on practice, it is not **an impairment** a-ground-for-notification*” – current wording could be read to imply impairment alone is grounds for notification
 - Voluntary notification box – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 3.3, When must I report intoxication while practising?**
 - **Add new second paragraph** – “*Intoxication means being under the influence of alcohol or drugs. See section 2.4 for more information.*” - this reduces the chance of misunderstanding around intoxication
 - **Intoxication flowchart**, Voluntary notification box – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 3.4, When must I report a significant departure from professional standards? Flowchart**, Voluntary notification box – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”

Section 4 – Guideline for non-treating practitioners

- **Initial text box, first sentence** – change to read “*This section is for non-treating practitioners (a practitioner who did not become aware of the concern while (and if) providing treatment to another practitioner and who is likely to be a manager, colleague or co-worker **of the other practitioner**)*” – for greater clarity
- **Section 4.1, What are my obligations?**
 - **First paragraph** - the thresholds set out for mandatory reporting for impairment and significant departures from accepted professional standards fail to include the relevant risk of harm thresholds, suggesting this is not required for a mandatory report – the thresholds need to be included
 - **Fourth paragraph, first sentence** – correct to read “*You may also need to make a mandatory notification about a student only if the student, undertaking clinical training with a serious and unmanaged impairment, is placing the public at substantial risk of harm **or which is** a very high threshold for reporting risk of harm*”
- **Section 4.2, When must I report impairment?**
 - **Add new second paragraph** – “*A health condition and impairment are not the same thing. A health condition needs to have a detrimental impact on a practitioner’s capacity to practice to be an impairment. See section 2.3 for more information.*”
 - **Impairment flowchart**
 - No notification box – change to read “*If the condition does not have a detrimental effect on practice, it is not **an impairment** a-ground-for-notification*”
 - Voluntary notification box – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 4.3, When must I report intoxication while practising?**
 - **Add new second paragraph** – “*Intoxication means being under the influence of alcohol or drugs. See section 2.4 for more information.*”
 - **Intoxication flowchart**, Voluntary notification box – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 4.4, When must I report a significant departure from professional standards?**
 - **Second paragraph** – change to read “*Non-treating practitioners in the same **specialty or** profession may more easily identify this practice, because they are in a better position to see it. They are more likely to make mandatory notifications **as compared with practitioners in a different specialty or profession.***” – this emphasises the challenges of judging practices in professions with a wide range of specialties, particularly medicine

- **Risk factors** - the factors used to help assess risk of harm around a potential departure from professional standards in section 3.4 for treating practitioners should also be included here
- **Significant departure from acceptable professional standards flowchart, Voluntary notification box** – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”

Section 5 – Guideline for employers of practitioners

- **Section 5.1, What are my obligations?**
 - **First paragraph** - the thresholds set out for mandatory reporting for impairment and significant departures from accepted professional standards fail to include the necessary degrees of risk of harm, suggesting this is not required for a mandatory report – the thresholds need to be included
- **Section 5.2, When must I report impairment?**
 - **Add new second paragraph** – “*A health condition and impairment are not the same thing. A health condition needs to have a detrimental impact on a practitioner’s capacity to practice to be an impairment. See section 2.3 for more information.*”
 - **Impairment flowchart**
 - **No notification box** – change to read “*If the condition does not have a detrimental effect on practice, it is not **an impairment** a ground for notification*”
 - **Voluntary notification box** – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 5.3, When must I report intoxication while practising?**
 - **Add new second paragraph** – “*Intoxication means being under the influence of alcohol or drugs. See section 2.4 for more information.*”
 - **Intoxication flowchart, Voluntary notification box** – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”
- **Section 5.4, When must I report a significant departure from professional standards?**
 - **Risk factors** - the factors used to help assess risk of harm around a potential departure from professional standards in section 3.4 for treating practitioners should also be used here
 - **Significant departure from acceptable professional standards flowchart, Voluntary notification box** – change to read “*You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary***”

Draft student guidelines – individual provisions

15. MIGA recommends the following changes to individual provisions of the draft student guidelines
 - **Section 1, ‘Mandatory notification requirements’**
 - **First paragraph** – reword to read “*To protect the public from ~~the risk of~~ harm, registered health practitioners and their employers must report **certain serious** concerns about health students*”
 - **Second paragraph, second sentence** – reword to read “*In these cases, practitioners, education providers or members of the public can choose to make a voluntary notification **if they feel this to be necessary***”
 - **Section 1, Initial text box, second sentence** – change to read “*This protects the public by ensuring that **certain** risks posed by students undertaking clinical training are reported.*”
 - **Section 1.1, What do these guidelines cover?**
 - **First paragraph** – change to read “*Under the National Law, certain groups must make mandatory notifications about students under some limited circumstances, when their conduct poses a **substantial risk of harm** to the public*”
 - **Third paragraph** – add new third sentence “*You may also choose to speak with appropriate colleagues, your professional indemnity insurer or legal advisor about specific circumstances or mandatory notification requirements more generally*”

- **Fifth paragraph , first sentence** – delete reference to ‘aged care issues’ for mandatory reporting – the only mandatory reporting obligation around aged care is on operators of aged care facilities, which is an inappropriate reference in this context
- **Section 1.2, Who should make a mandatory notification?**
 - **Second paragraph, first sentence** – reword to read *“Treating practitioners **providing health care with a principal place of practice (PPP) in Western Australia are exempt from this requirement but may still have to make a mandatory notification as a non-treating practitioner if their concerns arise outside the treating or therapeutic context**”*
 - **Fourth paragraph** – change to read *“Employers and other people do not have to make a mandatory notification about students, but they can raise concerns through a voluntary notification **if they consider this to be necessary**”*
- **Section 1.5, What doesn’t need to be reported?**
 - **First paragraph, first bullet point** – add *“are employed or engaged by a professional indemnity insurer”* to list of practitioners not required to make a mandatory notification
 - **Second paragraph, first sentence** – reword to read *“Treating practitioners **providing health care with a principal place of practice (PPP) in Western Australia do not have to make a mandatory notification**”*
 - **Second paragraph, final sentence** – reword to read *“...so they might either make a voluntary notification or encourage the practitioner or student they are treating to self-report **if they consider this necessary**”*
 - **Sixth paragraph, second sentence** – reword to read – *“Anyone (including practitioners and education providers) can make a voluntary notification about a student **on the grounds of impairment if they consider this to be necessary** if they believe the student’s impairment could have a detrimental effect on their clinical placement”*
- **Section 2, Impairment flowchart**
 - Voluntary notification box – change to read *“You do not have to make a mandatory notification but you can make a voluntary notification **if you consider it to be necessary**”*

16. If you have any questions or would like to discuss, please contact [REDACTED] / [REDACTED]

Yours sincerely

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