Response template: Public consultation - revised *Guidelines for mandatory notifications*

National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) are seeking feedback about the revised *Guidelines for mandatory notifications.*

This response template is an alternative to providing your response through the online platform available on the consultation website.

IMPORTANT INFORMATION

Privacy

Your response will be anonymous unless you choose to provide your name and/or the name of your organisation.

The information collected will be used by AHPRA to evaluate the revised guidelines. The information will be handled in accordance with AHPRA's privacy policy available here.

Publication of responses

Published responses will include the name (if provided) of the individual and/or the organisation that made the response.

You must let us know if you do **not** want us to publish your response.

Please see the public consultation papers for more information about publication of responses.

Submitting your response

Please send your response to: AHPRA.consultation@ahpra.gov.au

Please use the subject line: Feedback on guidelines for mandatory notifications

Responses are due by: **6 November 2019**

General information about your response

Are you responding on behalf of an organisation?	
Yes	What is the name of your organisation?
No	Are you a registered health practitioner? Yes If yes, which profession(s)? Medical Practitioner Are you a student? No If yes, which profession?
We may need to contact you about your response. Please write your name and contact details below. **(Skip if you wish to remain anonymous)**	
Name (optional)	Margaret Kay
Contact details (optional)	[redacted]

Public consultation questions

Please ensure you have read the public consultation papers before providing feedback as the questions are specific to the revised Guidelines for mandatory notifications.

Use the corresponding text boxes to provide your responses. You do not need to answer every question if you have no comment.

1. How easy is it to find specific information in the revised guidelines

It is relatively easy to find specific information in the revised guidelines though there are some key information that is difficult to access in the guidelines that should be addressed.

The introduction of the document should indicate that this document refers to the revisions of the National Law that were amended and passed early 2019 – to contextualise the document. Currently, the document seems to launch into the guidelines without flagging these changes clearly. Ensuring that it is clear that the current WA mandatory notification legislation remains in place in WA, and that the legislation is different in the other states and territories is important for the health practitioner to see early and clearly in the introduction.

Beginning the document by clearly stating that the purpose of the guidelines is to provide information about mandatory notifications requirements within the National Law would be helpful. The current structure provides some information about this but the statement of purpose is not clear. The document just launches into mandatory notifications. Given that the document could reduce anxiety that may be experienced by practitioners by establishing the purpose of the document is to inform and guide, it would be worth approaching the introduction in this manner.

Flagging that some states have other relevant legislation (such as Queensland with the Health Ombudsman legislation) is important to note so that the health practitioner understands the limitations of these guidelines – they focus on the National Law and there may be other legislation that the health practitioner needs to consider in their practice.

In this introduction, flagging the recent changes especially for treating practitioners and including the concept of the high threshold in the introduction would ensure that the document is visualised as a supporting document/guideline and assist health practitioners to more confidently engage with the document itself.

The exec summary as it stands is not really an exec summary and there seems no point labelling it as such. It is really more of an introduction and outline of the document. The contents section is very important.

In particular, it would be very helpful if the document linked directly to the relevant legislation in its entirety and also to the explanatory notes for the legislation.

The Appendix A with the relevant extracts should still be included but this is not enough information – the full legislation needs to be readily available via a hyperlink in the document.

It is good to see that the document about health practitioners hyperlinks to the one about students. This is very helpful.

The table in 1.2 with “Types of risks and reporting thresholds for different groups” is currently spread over multiple pages and it would be easily to read if it was on one page in the final formatting.

The flow charts are very helpful but the risk factor consideration charts are not helpful and just add volume to the document.

2. How relevant is the content of the revised guidelines?

It is vital that the guidelines for mandatory notifications provide enough clarity so that health practitioners care feel confident that they can access health care for themselves, without fear, recognising that there is a high threshold related to mandatory reporting of health issues that need to be reached before their treating practitioner will need to report such concerns. Enabling health practitioners to seek health care for themselves is an important factor in supporting the delivery of quality health care to the community.

The content of the revised guidelines presented here is relevant for health practitioners wishing to find out more information about mandatory notifications requirements within the National Law.

3. Please describe any content that needs to be changed or deleted in the revised guidelines.

It is very important that the health practitioner be advised to consult with their legal supports such as their medical defence organisation. Currently the guidelines mention this but it would be very easy to miss this suggestion – it should be more prominently placed and highlighted.

In section 1 it would be helpful if the concept of the holistic assessment could be introduced in this first Section as a concept that can then be referred to again later. Currently it is brought into Section 3 and this is very late in the document.

The table in 1.2 with "Types of risks and reporting thresholds for different groups" it is important that the exact words of the legislation are used in this table to prevent confusion. Currently the words do not appear to be the exact words. The current legislation does not have the words "are practising" instead – the current legislation in defining notifiable conduct simply says "practising" and similarly for other parts of this table. It would be much easier to follow the advice being provided in the guidelines if these words were to match to legislation precisely, rather than approximate the legislation. It is very confusing for the reader as it currently stands.

This is especially the case when the abbreviated version of the definition related to sexual misconduct which is shortened to: "have engaged in, are engaging in or might engage in sexual misconduct connected to their practice."

Whereas the legislation states that the treating practitioner must report "has engaged, is engaging, or is at risk of engaging in sexual misconduct in connection with the practice of the practitioner's profession."

While it may appear to assist the health practitioner to understand the legislation better by abbreviating or altering the words, this is not the case. It simply adds confusion by introducing difference that then has to be reconciled before being able to progress through the main task of determining whether a report is required.

Similarly, in Appendix A, the altered definitions (as in Clause 17) for the notifiable conduct in s140 have not been included with the new tense changes. I think that this needs to be altered for clarity for the reader.

After Section 1.5, it would be helpful to have a section 1.6 about "Who doesn't need to Report" including those working for medical defence organisations etc noting the relevant section of the legislation for these exemptions.

Adding a section 1.7 "What if someone else has notified" would help clarify the fact that a health practitioner may not need to report if they are aware that the person has already been notified. Including in this section the possibility that a person may have self-reported may be helpful to

discuss too.

Adding a section 1.8 “What happens if I fail to report” and then describe that “There are consequences if you fail to make a mandatory notification when you have to, although this is not a criminal offence under the National Law, your National Board may take regulatory action against you (such as, for example, a caution). It will consider all the circumstances before it decides whether to do so.” Which is also mentioned later in the document, but could be easily missed.

In section 2.3, there is a ‘Please read section 0’ that is confusing and needs correction.

In Section 2.6, the discussion drifts into repeating the guidelines about sexual misconduct, rather than the legislation about mandatory notification of sexual misconduct. This document focuses on guidelines related to the mandatory notification legislation and the wording it refers to should be that included in the legislation i.e. “has engaged, is engaging, or is at risk of engaging, in sexual misconduct in connection with the practice of the practitioner’s profession.” Currently, the document refers many times to the addition of “with people under the practitioner’s care or linked to the practitioner’s practice of their health profession”. While this information is contained in the Guidelines about guidelines about sexual misconduct, this is not a part of the legislation. It would be very helpful to hyperlink this section of the document to the Guidelines related to sexual misconduct as a separate helpful document, but the implication in the Guidelines for Mandatory Notification as they are currently presented here conflates these two issues of legislation and guidelines and this is not helpful for the health practitioner as the message is confusing. The requirements as presented in the legislation need to be very clearly presented here.

In Section 3.2 – the case of the tremor in the practitioner-patient is confusing. A person does not need to be reported just because they have a tremor. It is about their impairment i.e. whether the condition detrimentally affects or is likely to detrimentally affect the person’s capacity to practice the profession.” This case seems to imply that there is no need to report because the person is no longer performing procedures. There is an implication that there would be a need to report if the doctor was performing procedures and this is not necessarily the case. Therefore this case provides more confusion and does not help the reader to understand the requirements of the National Law.

Section 4.2 – this is the same case as Section 3.2 with a slightly different focus. It would be more helpful to offer a different example to increase the learning from the cases.

Section 4.3 – the Case in Example 1 is confusing because marijuana has a significant lag effect therefore there may be a reasonable belief that the person could be intoxicated when they are at work the next day given the nature of the drug. This case may need more detail to reduce the confusion that is potentially embodied in this case – or change the drug to a short acting one?

In the Care in Example 2 – it would be wise to suggest that the person considering the report ensure they are not making an assumption as to what has happened as there are other possible issues that arise. It would also be appropriate to ensure that it was clear that the health practitioner needs to do more than just make a report, they need to manage the issue at hand as well.

Section 5.2 – Example 1 – Once again the tremor is confusing as the assumption is that a proceduralist with a tremor could not work and would need to be reported, though this would depend on the situation and is much more nuanced that this. This case is recurrently used in the whole document and the implication appears to be that if the person was a proceduralist then there would be a need to report, yet this is not necessarily the case if the person was working safely. There are many causes for tremor. The nuance needs to be acknowledged to ensure effectively learning.

Example 3 – this case is a little confusing because the employer appears to be making the report after they are no longer the employer because the person has resigned. It is unclear whether this would then be a mandatory report or a voluntary one. These issues would need to be better clarified in this case to be helpful for educating.

Section 5.4 – Example 2 is very vague and difficult to follow and there is no clear rationale provided for the mandatory reporting decision. The whole situation seems very vague and this appears to be using mandatory reporting to avoid managing a situation when you are an employer and if the situation is so grave that you need to report, then surely you would also need to ensure you were no longer enabling that practitioner to practice as part of your locum service – rather than simply hoping that the report would eventually cause him to stop practicing. This case seems to be a very unclear example and therefore is unlikely to have the positive result of educating the health practitioner about mandatory notification.

4. Should some of the content be moved out of the revised guidelines to be published on the website instead?

If yes, please describe what should be moved and your reasons why.

The current guidelines for the older legislation already has a pdf and a web version. These served different purposes and it has been very helpful having both versions available.

Given that the new guidelines cover a lot of material, it would be helpful to have the information to be on the website with a clear flow chart for each of the four mandatory reporting issues that could be interactive to enable a doctor to navigate the issues as if they were an employer or as if they were considering an issue with a student or as if they were a health practitioner. Using this format, the webpage flowchart would be an interactive learning tool that presented the precise words of the legislation and highlighted the tense relevant in the specific situation that was being explored and enabling progress along the pathway.

Meanwhile, the pdf version could have the static flowcharts for each of the four relevant perspectives: Treating practitioner, Non-treating practitioner, Employer, as well as presenting the information relating to the mandatory notification of a student as another setoff guidelines.

It would be helpful to have a pdf document that has all the information together with an easy contents section that is hyperlinked to the relevant sections. It would also be helpful to have a separate pdf document with the full explanation for each of the four relevant perspectives as described. Some practitioners will prefer to focus on / download the section that is most relevant to their particular circumstances.

5. How helpful is the structure of the revised guidelines?

The structure of the revised guidelines is helpful, except for the risk factor consideration charts which simply confuse the message unless you are already very familiar with the message that these charts are trying to convey. Even then the message is difficult to understand from the risk factor consideration charts and it is likely that they will cause the doctor using these charts to report at a lower rather than a higher threshold. These charts do not assist in the decision making and should be removed.

It is appropriate to present these risk factors in the introduction of the document as a separate section so that the health practitioner understands that these issues are to be considered when making the assessment. It would be helpful to ensure that it is clear that these are based on the explanatory notes (and reference these for the reader with a hyperlink) rather than based on the words of the legislation itself. Currently this is very unclear in the document.

6. Do the revised guidelines clearly explain when a mandatory notification is required and when it is not?

Please explain your answer.

The guidelines provide appropriate guidance, however the legislation is very complex with its different tenses for different situations and the National Law is not nationally consistent with these current changes and this continues to cause much confusion. It is very helpful that there are many statements emphasising the high threshold for reporting. If the cases are revised as discussed in Section 3 above, then there would be adequate clarity to begin to understand the legislative requirements, with legal guidance to support the decisions being made.

7. Are the flow charts and diagrams helpful?

Please explain your answer.

The flow charts are helpful.

8. Are the risk factor consideration charts helpful?

Please explain your answer.

The risk factor consideration charts are not at all helpful. They confuse the message. It is not clear how any practitioner should interpret the green and red sections with each of the factors presented. It is not clear how these factors were determined to be the most important factors for the practitioner to consider, rather than other factors. It is unclear whether these risk factor charts are supposed to refer to the cases or refer to the topic. They do not provide anything more helpful than a list of things that could be considered when making a determination. Such as list would reduce the space, and enhance the reading while encouraging the reader to understand that the list is not exhaustive, but designed to stimulate consideration of factors more broadly that could be relevant to the case at hand. These could be presented as factors that relate to the health practitioner who is considering making a report as well as factors that relate to the health practitioner about whom concerns have arisen.

Currently the list provided in section 3.4 for reporting a significant departure from professional standards says: “Factors including circumstance, practice context, controls such as oversight and reporting.” These concepts are all quite vague and better terms/examples could be listed to more reasonably set the health practitioner’s mind to the task of assessing risk of harm. Indeed, the preceding sentence “Use the following chart to help assess the level of risk.” Does not actually say “risk of harm” and the addition of that word would help the reader much more than the diagram for the risk factor consideration chart.

It would be a much better and clearer document if these risk charts were simply deleted.

9. Are the examples in the revised guidelines helpful?

Please explain your answer.

I have commented on the examples that need further clarification in Section 3 above. The examples need to be clear, not only in the example but also in what they imply. The case of the tremor is very difficult as it implies that the presence of a tremor (and by implication, other potentially minor physical health issues) will necessarily impact on the practice of that health practitioner, when this is not necessarily the case and appropriate consideration of the context in each situation needs to be considered. The cases need to be clear, not only in their presentation, but also ensuring that there are no unintended implications that could be misleading in the education of the health practitioners reading these.

When the cases discuss the employer, it is helpful to state if the employer is a health practitioner as well as an employer too.

10. Should there be separate guidelines for mandatory notifications about students or should the information be included in guidelines about practitioners and students (but as a separate section)?

Please explain your answer.

It is reasonable to have separate documents and to hyperlink between the documents so that they readily link to each other. There should be an acknowledgement that some health practitioner students are also health practitioners working in another profession as they study.

The revised guidelines explain that it is not an offence to fail to make a mandatory notification when required, but a National Board may take disciplinary action in this situation.

11. Is this made clear in the revised guidelines?

Please explain your answer.

This statement is embedded deeply in the document and therefore would be easily missed. While is should be left where it already is, it would be helpful to have this statement in the Section 1 as well – see Section 3's response above.

12. Is there anything that needs to be added to the revised guidelines?

I have already commented on what needs to be added in Section 3

13. It is proposed that the guidelines will be reviewed every five years, or earlier if required. **Is this reasonable?** **Please explain your answer.**
It is reasonable to review these guidelines every five years. It may be reasonable to add more case studies as an extra document into the future to assist in clarifying some issues that arise once the guidelines have been released.
14. Please describe anything else the National Boards should consider in the review of the guidelines.
Nil to describe
15. Please add any other comments or suggestions for the revised guidelines.
No further comment

Thank you!

Thank you for participating in the consultation.

Your answers will be used by the National Boards and AHPRA to improve the Guidelines for mandatory notifications.