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? The Royal Australian and New Zealand College of Psychiatrists
No	Are you a registered health practitioner? Yes/No If yes, which profession(s)? Are you a student? Yes/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)	[redacted]
Contact details (optional)	[redacted] [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
The Executive Summary and contents page make it easy for potential notifiers to navigate the revised guidelines and find relevant information. Choosing to structure the revised guidelines by type of notifier, rather than type of notifiable conduct, also assists readers to quickly locate the information that is relevant to them. This is particularly important given that the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (the 2019 Amendments) creates different mandatory reporting requirements for treating and non-treating practitioners, establishing two distinct categories of notifiers where there was previously only one. The overview provided by the Executive Summary and contents page, as well as clear sections and headings, make the revised guidelines easily navigable and contribute to the reader's understanding of the 2019 Amendments and their operation. Cross-referencing sections of the guidelines also assists the reader to find relevant information. Hyperlinks could be inserted into the cross-references so that readers can move between them with more ease, particularly given the length and complex content of the revised guidelines.
2. How relevant is the content of the revised guidelines?
The content of the revised guidelines is relevant and conveyed in a way which considers the health practitioner reader. We have made further recommendations below in our responses to questions 3 and 12 in relation to content.
3. Please describe any content that needs to be changed or deleted in the revised guidelines.
Section 2- Concerns to report It is helpful that in sections 2.3-2.6, definitions are given of each type of conduct. However, to further highlight those definitions, we suggest that they be placed in text boxes as readers will likely be moving between section 2 and their relevant notifier-specific section. **Section 2.2- What is 'reasonable belief'?** We are encouraged that section 2.2 of the revised guidelines is significantly less legalistic than the 'reasonable belief' section in the current published guidelines. The information in the revised guidelines has a more practical focus and is therefore likely to be more accessible to health practitioners. However, we consider that the revised guidelines could provide further guidance to assist health practitioners in determining whether they hold a reasonable belief, such as a checklist or flowchart including questions which may assist health practitioners to make that determination. The questions could include: • have you directly witnessed the conduct that you believe may require you to make a mandatory notification? If not, have you received information about the conduct from a reliable and trustworthy source? • have you objectively assessed all surrounding circumstances to form the belief? Would

a reasonable person in your shoes form the same belief if they considered the surrounding circumstances?
- Is your belief a mere suspicion or is it well-founded given the facts and circumstances?

It would also be helpful to provide examples of when a reasonable belief is present and when it is not.

Section 2.6- Sexual misconduct

Currently, the wording of the definition of 'sexual misconduct' (provided in the first paragraph of section 2.6) could cause confusion and unnecessary concern for health practitioners, as it could also apply to consensual and respectful personal relationships between colleagues are not permitted. We recommend that consideration be given to making the definition clearer and more specific to avoid such confusion.

Section 4.2- When must I report impairment?

We recommend that the sentence '[a] practitioner may have an impairment that causes a minor detrimental impact on their capacity to practise but, if it poses only a rare or possible risk to their patients, it does not trigger notification' may need to be reviewed to more clearly reflect risk assessment principles.

We would expect that a rare/possible risk to a patient with catastrophic consequences (for example, death or serious injury) would still need to be mandatorily reported to AHPRA. Although the likelihood of the risk eventuating is low, the possible consequences of the risk are great. As such, the overall assessment of the risk would indicate that it is a very serious one. We recommend that this should be more directly addressed in discussions of risk in section 4.2 and throughout the revised guidelines to ensure that health practitioners appreciate that assessing risk involves assessing both likelihood and severity of consequences and that a risk being 'rare' does not preclude it from being reported.

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.

Although it may not be necessary to remove any information from the guidelines and transfer it to the website, it may be helpful to duplicate some information to formulate a 'quick reference guide'. For example, the table entitled 'Types of risks and reporting thresholds for different groups' on page 5 could be included in the AHPRA website to give readers a snapshot of the content of the guidelines, and encourage them to seek more detailed information within the guidelines.

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

We consider that the revised guidelines are well-structured. In particular, we endorse the general sections being placed before the notifier-specific sections, as this allows the health practitioner to become familiar with the general framework of mandatory reporting before being exposed to the specifics relevant to each notifier type.

It is also helpful that each section begins with a text box which provides a summary of the information provided in that section and explicitly sets out its relevance and applicability. Keeping the structure consistent in each notifier-specific section is likely to assist readers who are not sure which notifier category they fit into and therefore may need to read two or more notifier-specific sections.

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

Please explain your answer.

The addition of the 'what does not need to be reported?' section aids the reader's understanding of when mandatory notifications are not required. For clarity, this section should also set out that conduct which *could* be notifiable should not be mandatorily reported if the 'reasonable belief' and/or relevant 'risk of harm' thresholds are not met.

The examples provided in each notifier-specific section also assist readers in determining whether they are required to make a mandatory notification by highlighting different levels of risk and conduct, and whether they would require a mandatory notification.

7. Are the flow charts and diagrams helpful?

Please explain your answer.

The flowcharts included in this version of the Guidelines are helpful. However, we believe that it would be beneficial for the flowcharts to appear before the substantive text in sections 3, 4 and 5 of the guidelines to contextualise the substantive information by providing an overview of the decision-making process.

It may be useful in these flowcharts to also link each step to a section of the substantive information. For example, in the flowchart entitled 'Treating practitioner: Impairment' on page 13, in the box entitled '1: Impairment', a reference to section 3.2 of the guidelines could be provided to link the flowcharts and the substantive text more closely. We believe that doing so would make the decision-making process clearer for health practitioners, and encourage the use of the more detailed information when appropriate.

8. Are the risk factor consideration charts helpful?

Please explain your answer.

The risk factor consideration charts are helpful, as they highlight the importance of considering both risk and mitigating factors in making a decision about whether to report certain conduct. However, we recommend that the '>' symbols are replaced with 'medium' column to provide readers with more detail about what would be considered a 'medium' risk.

9. Are the examples in the revised guidelines helpful?

Please explain your answer.

The examples in the revised guidelines are helpful, particularly when they stipulate whether or not that particular conduct would trigger a mandatory notification, as they demonstrate how the law and the guidelines apply to factual circumstances.

We consider that the examples in section 3 may also help to allay concerns about the extent to which the amendments to the National Law expanded mandatory reporting requirements for treating practitioners. The examples reinforce that mandatory notifications in this context are only required when there is a substantial risk of harm, which is a high threshold.

We also suggest including vignettes or case studies which are longer and more detailed than the current examples in the guidelines. Providing extended examples would allow a more thorough exploration of conduct which meets relevant thresholds. It would be helpful for these vignettes to draw on previous National Board or tribunal decisions, possibly providing a link to the decision online so that practitioners can seek further detail if desired.

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.

Keeping the guidelines for mandatory notifications about students separate from the revised guidelines is appropriate, given that there are different categories of notifiers in the student context and students are an entirely different cohort of notification subject. Therefore, including them in this guideline could cause confusion for potential notifiers.

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.

Although it is clear that failing to make a mandatory notification may result in disciplinary action but not an offence being commissioned, it may not be clear to readers what disciplinary/regulatory action is.

To clarify this point, it may be valuable to:

- use the phrase 'criminal offence' rather than 'offence' alone
- describe that disciplinary/regulatory action is an administrative decision made by the relevant National Board and is not criminal in nature and
- provide a link to the Regulatory Principles and Possible Outcomes pages on the AHPRA website to emphasise that disciplinary/regulatory action is taken to protect the public.

We emphasise that health practitioners who are considering whether they are required to make a notification are likely to be experiencing considerable stress. They may be concerned about the personal and professional consequences which may result from making a notification. They may also be concerned about retribution from a practitioner-patient or an employer, or worried that colleagues might learn of the notification, isolating them as a result. Therefore, the consequences of making or not making a mandatory notification should be very clearly explained in the guidelines, as should the protections for those who make mandatory notifications.

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

Categories of notifiers

The revised guidelines do not currently set out definitions for the three categories of notifiers in section 1.2. Given that the 2019 amendments further separate notifiers into 'treating practitioners' and 'practitioners other than treating practitioners', definitions would assist readers to assess whether they are a particular type of notifier and whether they need to make a mandatory notification.

Additionally, it is conceivable that some practitioners may fall into two categories of notifiers. For example, there could be a situation in which a psychiatrist owns a medical practice and employs a number of health practitioners, one of whom they have observed providing treatment to patients while intoxicated. The psychiatrist may therefore fall into both the 'non-treating practitioner' category, and the category of 'employer' (as the individual making the mandatory notification on behalf of the employing entity). It would be highly useful for the guidelines to address this issue and provide general guidance in relation to it.

Sexual misconduct thresholds

We suggest that sections 3.5, 4.5 and 5.5 explicitly state that, when considering whether to report sexual misconduct, there is no need to consider whether the public is at any risk of harm. This will ensure that readers understand that there is no 'risk of harm' threshold to consider, and that **all** sexual misconduct issues must be reported, if a reasonable belief has been formed.

Significant departure from professional standards

In sections 3.4, 4.4 and 5.4, it is recommended that the guidelines address what would make a departure from professional standards 'significant', as opposed to minor. The examples provided go some way to demonstrating what a 'significant' departure may look like, but more discussion of the threshold itself is recommended for clarity.

Different state and territory jurisdictions

Given that practitioners and employers in Western Australia will not be bound to the 2019 amendments when they come into effect, and given that practitioners and employers in New South Wales and Queensland need to make notifications through the state's health complaints organisation rather than AHPRA, we suggest that section 1 in the revised guidelines include a section which covers these jurisdictional differences.

It may also be relevant in this section to address the possibility that complaints may also be transferred to a relevant state or territory health complaints organisation if appropriate under the National Law.

Therapeutic relationship

With the introduction of specific requirements for treating practitioners, health practitioners are likely to have queries in relation to the duration of the therapeutic relationship and when it is deemed to end for the purposes of the mandatory reporting provisions of the National Law. In some circumstances, the end of the therapeutic relationship may not be clear, particularly if a health practitioner has treated a colleague or ex-colleague, for example. We therefore consider that the guidelines should provide guidance in relation to this issue, particularly in relation to how the end of the therapeutic relationship will be determined by the relevant National Board or tribunal.

13. It is proposed that the guidelines will be reviewed every five years, or earlier if required.

Is this reasonable?

Please explain your answer.

Given that the revised guidelines will be the first version to address the 2019 Amendments, we recommend that the guidelines be reviewed within two years of being issued. This earlier review will allow AHPRA to incorporate any practice knowledge that AHPRA and the National Boards accumulate following the implementation of the 2019 amendments. Mandatory notifications made by practitioners following the commencement of the 2019 amendments may lead to National Board or Tribunal decisions which set relevant precedents which should inform or be incorporated into the guidelines.

Beyond the initial two year review period, we agree that the guidelines should be reviewed every five years, subject to changes required as a result of further legislative amendments, considerable changes in the National Board's decision-making processes or AHPRA's notification and investigation processes.

14. Please describe anything else the National Boards should consider in the review of the guidelines.

Risk thresholds

We would emphasise that the most likely challenge for health practitioners who are deciding whether to make a mandatory notification is the assessment of conduct in relation to the relevant risk threshold. This is particularly challenging given the different thresholds for different types of conduct. Therefore, the guidelines should be developed with this particular challenge in mind. Where thresholds are discussed, practical aids may be helpful to ensure that practitioners using these guidelines as a decision-making tool can easily the decision-making process.

Length of document

Although the content of the document is relevant, we recommend that the length of the document be shortened to make the document more accessible for health practitioners. Health practitioners who access the guidelines are likely to be experiencing a number of stressors associated with the mandatory notification process- not only with deciding whether they are obliged to make a mandatory notification, but also the professional and reputational consequences which could flow

from making or not making one. A shorter document would be less overwhelming and more accessible for practitioners.

We also recommend that all aspects of the guidelines are examined to ensure that they are suited to their predominant audience- health practitioners- and the personal and professional anxieties that they face when considering whether to make a notification.

Consultation

We would also encourage AHPRA to consult with health practitioners and employers who have previously made mandatory notifications to AHPRA to ascertain the type of guidance that was or would have been helpful for them in deciding whether to make a mandatory notification.

15. Please add any other comments or suggestions for the revised guidelines.

We do not have any further comments or suggestions in relation to the revised guidelines at this time.

The College looks forward to seeing the final version of the revised guidelines following this consultation, and is willing to provide any other feedback to the consultation as required. Please contact Ms Rosie Forster, Executive Manager, Practice, Policy and Partnerships on (03) 9601 4943 or at rosie.forster@ranzcp.org to discuss further.

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.