



Aboriginal and Torres Strait  
Islander Health Practice  
Chinese Medicine  
Chiropractic  
Dental  
Medical  
Medical Radiation Practice  
Nursing and Midwifery  
Occupational Therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

Australian Health Practitioner Regulation Agency

## Public consultation paper

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September 2019

### Consultation on the review of the *Guidelines for mandatory notifications*

AHPRA and the 15 National Boards are undertaking a joint review of the *Guidelines for mandatory notifications* (the guidelines).

#### Preliminary consultation

In early 2019 AHPRA and the 15 National Boards undertook a targeted preliminary consultation with key stakeholders. This enabled the National Boards to test their proposals with key stakeholders and refine them before proceeding to public consultation. It also provided an opportunity for feedback to improve the clarity of the consultation documents.

A range of stakeholders submitted written responses, including professional associations, jurisdictions (Commonwealth and state/territory health departments) and other regulatory bodies.

AHPRA and the Boards are now releasing this consultation paper for public feedback.

#### Providing feedback

AHPRA and the Boards are seeking to consult on their draft revised guidelines. In addition to general feedback, we are interested in stakeholders' feedback on specific questions about the revised guidelines.

Feedback can be provided by completing the submission form available on [the website](#) by close of business on 6 November 2019.

#### Publication of submissions

The Boards and AHPRA publish submissions at their discretion. We generally publish submissions on our websites to encourage discussion and inform the community and stakeholders. Please advise us if you do not want your submission published.

We will not place on our websites, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally-identifying information from submissions, including contact details.

The Boards and AHPRA can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the Freedom of Information Act 1982 (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or want us to treat all or part of it as confidential.

**Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is requested.**

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## Overview

1. The Health Practitioner Regulation National Law as in force in each state and territory (the National Law) requires the National Boards to develop and approve codes and guidelines to provide guidance to the health practitioners they register.
2. The National Boards first developed, approved and published guidelines for mandatory notifications in 2010. The guidelines were reviewed and a revised version published in 2014. In keeping with good regulatory practice, they are now due for review. The review will also address changes to the mandatory notifications requirements made in amendments to the National Law passed earlier in 2019. These amendments established a new, higher risk threshold for treating practitioners, which further limits the circumstances for treating practitioners to make mandatory notifications.
3. The National Boards have carefully considered the objectives and guiding principles of the National Law and the Regulatory principles for the National Scheme<sup>1</sup> in deciding whether they should propose changes to the existing guidelines, adopting a risk-based approach to the review.
4. The National Boards are inviting responses to specific questions and general comments on the draft revised guidelines.

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<sup>1</sup> The National Registration and Accreditation Scheme

## Background

5. The National Law requires registered health practitioners, employers and education providers to make mandatory notifications about registered health practitioners and students in some situations.
6. Amendments to the mandatory reporting requirements were passed by the Queensland Parliament earlier in 2019. The amendments further limit the circumstances that would trigger treating practitioners compared to other notifier types: non-treating practitioners, employers and education providers) to make a mandatory notification (except with regard to sexual misconduct).
7. These changes were made to ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm.
8. National Boards develop and approve codes and guidelines under the National Law to provide guidance to the health practitioners they register. The guidelines explain the mandatory notification requirements in the National Law.

## Objectives of the review

9. The objective of the review is to make sure that the guidelines for mandatory notifications are as effective as possible and that they clearly explain the thresholds and requirements for making a mandatory notification, including the 2019 amendments.

## The purpose of the revised guidelines

10. The guidelines explain the requirements for treating registered health practitioners, non-treating registered health practitioners, employers of registered health practitioners and education providers to make mandatory notification under the National Law. The purpose of the mandatory reporting requirements is to protect the public. Considering the limited circumstances that apply to mandatory notifications about students, there are separate guidelines for notifications about students and about registered practitioners.
11. The guidelines for registered practitioners describe:
  - what conduct must be reported
  - when to make a mandatory notification about:
    - impairment
    - intoxication while practising
    - sub-standard practice
    - sexual misconduct
  - when a mandatory notification is not required
  - who must make a mandatory notification
  - who a mandatory notification must be made about
  - consequences of not making a mandatory notification where one is required
12. The guidelines for mandatory notifications about students address:
  - what conduct must be reported (only impairment for students)
  - when to make a mandatory notification about impairment
  - who must make a mandatory notification
  - consequences of not making a mandatory notification where one is required
  - exemptions from making a mandatory notification (only for treating and non-treating practitioners).
13. The proposed changes to the guidelines include changes to create a separate Guideline for mandatory notifications about students and new content to address the amendments for treating practitioners expected to commence in late 2019 or early 2020. The clarity and readability of the guidelines has been improved so they are easier to understand. There are updated flow charts to help practitioners, employers and education providers decide whether they must make a mandatory notification.
14. The Guideline structure has also been reorganised to make it easier to find relevant content. We expect that most readers of the guidelines will be looking for guidance about whether they need to make a mandatory notification. Therefore, the draft revised Guideline for making a notification about a registered practitioner is restructured according to the notifier type – i.e. treating practitioner, non-treating practitioner, employer - so all the relevant information for that notifier type is in one place. While this

involves some repetition for those reading the entire guidelines, the document is not expected to be usually read in this way. The PDF and online versions will include links redirecting users to relevant content.

15. The revised guidelines also include new charts to help explain how guidance factors can be considered when assessing the risk of harm to the public. They can be used to help potential notifiers decide whether a mandatory notification should be made. While feedback from preliminary consultation revealed a high demand for more guidance and direction about when to make a mandatory notification, there were conflicting views about how the draft guidelines reflected reporting requirements. It is difficult to draw a hard line and definitively define risk – for when to notify. The new charts, listing relevant considerations and how extreme examples of those considerations could relate to increasing risk, are provided in the revised draft guidelines. We note that ultimately, there needs to be an integrated and balanced judgement about risk of harm which considers the ground (type of mandatory notification) and mitigating risk factors, acknowledging that some may bear a heavier weight than others.

### **Options statement – Guidelines for mandatory notifications**

#### **Option 1 – Status quo (continue with current guidelines)**

16. Option 1 would continue the existing guidelines with a new section inserted for treating practitioners. The guidelines would continue to explain the National Law requirements for mandatory notifications with only minor corrections and updates to ensure accuracy.

#### **Option 2 – Proposed revised guidelines**

17. Option 2 would involve more significant changes to the guidelines, including creating two separate guidelines and a restructure of the content according to notifier type (for the guidelines that relate to registered practitioners):

- Treating practitioner
- Non-treating practitioner
- Employer

18. Option 2 would also address the amendments for treating practitioners making mandatory notifications.
19. The revised draft guidelines improve the overall readability and accessibility and provide greater clarity and guidance to potential notifiers to help them decide whether they are required to make a mandatory notification.

#### **Preferred option**

20. The National Boards prefer Option 2.

### **Issues for discussion**

#### **Potential benefits and costs of the proposed option**

21. The benefits of the preferred option are that the draft revised guidelines:
  - are more user-friendly, arranged and structured from the perspective of the user and the subject of the notifications (registered practitioner or student)
  - have been reworded to be simpler and clearer
  - provide greater clarity about:
    - the types of notifiable conduct
    - how to decide whether a mandatory notification must be made
    - who must report what kind of conduct and by whom
  - provide factors to consider to help notifiers decide when to notify while avoiding unnecessary reports
  - reassure patient-practitioners' that they can feel confident to seek treatment for their health issues
  - build health consumers' confidence that the National Law continues to require mandatory reports to protect patient safety and maintain the community's trust

The costs of the preferred option are that registrants, employers and education providers and other stakeholders will need to become familiar with the new guidelines.

### **Estimated impacts of the draft revised guidelines**

22. The changes proposed in the draft revised guidelines bring significant benefits that will increase understanding of when to notify. More significant changes may be identified through public consultation. National Boards recognise that mandatory notifications can be a complex area and will continue to work on materials to support understanding of the changes.
23. We anticipate that the main impact of the proposed changes on practitioners, education providers, employers and other stakeholders will be to make the requirements for reporting clearer. Otherwise the impacts are expected to be relatively minor.

### **Relevant sections of the National Law**

24. Section 140-143 of the National Law contains provisions about mandatory notifications.

#### **Questions for consideration**

The National Boards are inviting feedback on the following questions:

1. How easy is it to find information in the draft guidelines?
2. How relevant is the content of the draft guidelines?
3. Please describe any content that needs to be changed or deleted in the draft guidelines.
4. Should some of the content be moved out of the draft guidelines to the website?
5. How helpful is the structure of the draft guidelines?
6. Do the draft guidelines clearly explain when a mandatory report is required and when it is not?
7. Are the flow charts helpful?
8. Are the risk factor consideration charts helpful?
9. Are the examples in the draft guidelines helpful? If not, how can they be improved?
10. Should there be a separate Guideline for mandatory notifications about students or should the information be integrated within a single Guideline (but as a separate section)?
11. The draft 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. Is this clear?
12. Is there anything that needs to be added to the draft guidelines?
13. It is proposed that the guidelines will be reviewed every five years, or earlier if required. Is this reasonable?
14. Please describe anything else the National Boards should consider in the review of the guidelines.
15. Please add any other comments or suggestions for the draft guidelines.

## **Other relevant National Board documents and parts of the National Law**

The National Board's Code of conduct or equivalent document includes information about the standards of conduct expected of registered health practitioners.

### **Other relevant parts of the National Law**

The National Law also has several other provisions related to mandatory notifications. Other relevant parts of the National Law are:

- Definition of impairment (section 5)
- Grounds for a notification (section 144)
- Voluntary notifications (sections 145)
- Protection from liability for persons making a notification (237)

### **Other guidance**

National Boards may also issue additional guidance for health practitioners from time to time to supplement these guidelines.

### **Anticipated impacts of the revised guidelines**

The impacts on practitioners, business and other stakeholders arising from the changes proposed in the revised guidelines are expected to be small. The changes proposed focus on providing explanation and clarification, especially about the legislative amendments due to be implemented late 2019/early 2020.

## Statement of assessment

Board's statement of assessment against AHPRA's Procedures for the development of registration standards, codes and guidelines and COAG principles for best practice regulation

### **Draft revised Guidelines for mandatory notifications**

The Australian Health Practitioner Regulation Agency (AHPRA) has Procedures for the development of registration standards, codes and guidelines which are available at: [www.ahpra.gov.au](http://www.ahpra.gov.au)

Section 25 of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law) requires AHPRA to establish procedures for the purpose of ensuring that the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice.

Below is the National Boards' assessment of their proposal for draft revised guidelines for mandatory notifications, against the three elements outlined in the AHPRA procedures.

#### **1. The proposal takes into account the National Scheme's objectives and guiding principles set out in section 3 of the National Law**

##### Boards' assessment

The Boards consider that the proposed draft revised guidelines meet the objectives and guiding principles of the National Law.

The proposal takes into account the National Scheme's key objective of protecting the public by explaining the National Law requirements for mandatory notifications.

The draft revised guidelines also support the National Scheme to operate in a transparent, accountable, efficient, effective and fair way. The proposal gives clear guidance on National Law requirements about whether a practitioner/employer/education provider should make a mandatory notification about a registered practitioner or student

#### **2. The consultation requirements of the National Law are met**

##### Boards' assessment

The National Law requires wide-ranging consultation on proposed guidelines.

The Boards are ensuring that there is public exposure of its proposal and the opportunity for public comment by undertaking an eight week public consultation process. This will include the publication of the consultation paper on National Board websites and informing practitioners about the consultation. The Boards will also draw this paper to the attention of key stakeholders.

The Boards will take into account the feedback it receives when finalising the guidelines.

#### **3. The proposal takes into account the COAG Principles for Best Practice Regulation**

##### Boards' assessment

In developing the draft revised guidelines the Boards have taken into account the Council of Australian Governments (COAG) Principles for Best Practice Regulation.

As an overall statement, the Boards have taken care not to propose unnecessary regulatory burdens that would create unjustified costs for the professions or the community. In addition, as these guidelines only explain the requirements in the National Law, they do not create extra regulatory burden.

The Boards make the following assessment specific to each of the COAG principles expressed in the AHPRA procedures

## COAG Principles

### a. Whether the proposal is the best option for achieving the proposal's stated purpose and protection of the public

#### Boards' assessment

The Board considers that its proposal is the best option for achieving the stated purposes. The proposed draft revised guidelines do not propose significant changes to the current guidelines, except for addressing the changes triggered by the legislative amendments.

The proposal would protect the public by making the mandatory reporting obligations clearer and more accessible (structured according to type of notifier) and would provide additional guidance for registered practitioners, employers and education providers.

### b. Whether the proposal results in an unnecessary restriction of competition among health practitioners

#### Boards' assessment

The proposal does not have an impact on competition as the requirements apply equally across all professions.

### c. Whether the proposal results in an unnecessary restriction of consumer choice

#### Boards' assessment

The proposal will not result in any unnecessary restrictions of consumer choice as the proposed draft guidelines would apply to all professions.

### d. Whether the overall costs of the proposal to members of the public and/or registrants and/or governments are reasonable in relation to the benefits to be achieved

#### Boards' assessment

The Boards have considered the overall costs of the proposed draft revised guidelines to members of the public, registered practitioners, employers, education providers and governments and concluded that the likely costs are minimal as the Boards are not proposing significant changes to the current guidelines.

Subject to feedback on the proposed draft guidelines, the benefits of having clear guidelines for potential notifiers outweigh any minimal costs related to notifiers being required to become familiar with the revised guidelines, if approved.

### e. Whether the proposal's requirements are clearly stated using 'plain language' to reduce uncertainty, enable the public to understand the requirements, and enable understanding and compliance by registrants

#### Boards' assessment

The Boards consider the proposed draft guidelines have been written in plain English that will help practitioners, employers, education providers and practitioners who may need to seek help and the public to understand the obligations for mandatory reporting. Experts in plain English writing were consulted in drafting the guidelines for public consultation.

### f. Whether the Board has procedures in place to ensure that the proposed registration standard, code or guideline remains relevant and effective over time

#### Boards' assessment

If approved, the Boards will review the revised guidelines regularly, generally every five years, including an assessment against the objectives and guiding principles in the National Law and the COAG principles for best practice regulation.

However, the Boards may choose to review the guidelines earlier, in response to any issues which arise or new evidence which emerges to ensure the guidelines' continued relevance and workability.