

6 November 2019

Dr Anne Tonkin
Chair, Medical Board of Australia
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Dear Dr Tonkin,

RACGP submission to the consultation on revised Guidelines for Mandatory Notifications

The Royal Australian College of General Practitioners (RACGP) thanks the National Boards of Australia, and the Australian Health Practitioner Regulation Agency (AHPRA), for the opportunity to comment on the revised Guidelines for Mandatory Notifications.

As previously communicated, the RACGP does not support the recent changes to mandatory notifications. However, we make this submission in an attempt to make the mandatory reporting process as clear as possible for health practitioners. To minimise the barriers for health professionals seeking care, the guidelines must be clear, easily accessible and well-publicised. Supporting resources must be detailed enough to remove any doubt about when a mandatory report is required.

In July 2019, we commented on the targeted consultation on the Guidelines, which incorporated feedback from members from several RACGP Expert Committees. For your reference, a copy of this submission is provided in Appendix 1.

As part of this public consultation, we have reviewed the revised draft guidelines and have identified that based on our feedback, several improvements have been made, including:

- content explaining the circumstances where a report is not required included up-front in the guidelines
- streamlined terminology, with many terms that the RACGP had highlighted as being unclear now removed from the document
- logical division of the guidelines, with content directed to those who will be using the document
- re-design of risk grid charts and flow charts. RACGP members have noted that these are very useful to illustrate how the system will work.

However, several issues outlined in our previous submission have not been addressed and we take this opportunity to reiterate our concerns.

Now that the consultation is public, we have gathered feedback from a wider range of members. Our members have provided additional feedback on the revised Guidelines, including:

- streamlining content
- developing additional resources to support practitioners
- identifying areas where further clarification and inclusion of examples will be beneficial
- clarification of the purpose of mandatory and voluntary notifications.

Please see Appendix 2 for further detail on the RACGP's recommendations.

We look forward to continuing to contribute to discussions around this important topic, and assisting AHPRA to ensure the health and wellbeing of the GP profession and our members. Should you wish to discuss this matter further, please contact either myself or Ms Michelle Gonsalvez – National Manager, Policy and Advocacy, on 03 8699 0490 or via michelle.gonsalvez@racgp.org.au.

Yours sincerely,



Dr Harry Nespolon
President

Appendix 1 – Previous submission

RACGP submission to the consultation on revised Guidelines for Mandatory Notifications

31 July 2019

The Royal Australian College of General Practitioners (RACGP) thanks the National Boards of Australia, and the Australian Health Practitioner Regulation Agency (AHPRA), for the opportunity to comment on the revised Guidelines for Mandatory Notifications.

The RACGP does not support the recent changes to mandatory notifications. As indicated in our [prior submissions](#), we see that the changes will have detrimental impacts on practitioners. The changes to the legislation do not remove the barrier to practitioners seeking help. They have instead made the language around the issue more complicated – which is particularly of concern when the practitioners affected may already be in a fragile mental state.

While our position on this matter has not changed, we make this submission in an attempt to make the mandatory reporting process as clear as possible for health practitioners. In order to minimise the barriers for health professionals seeking care, it is essential that the guidelines are clear, easily accessible, well-publicised, and that supporting resources are detailed enough to remove any doubt about when a mandatory report is needed.

Overall, the RACGP sees the guidelines as a valuable resource. However, several amendments should be made to ensure that guidelines are working towards addressing the fraught and complex moral, ethical, social and professional dilemmas associated with mandatory reporting.

The RACGP's recommendations for improving guidelines are outlined below.

1. Add additional information regarding mandatory reporting process and exemptions:

1.1 AHPRA's processes

The Guidelines should include a documented process for AHPRA's response to a mandatory notification to help practitioners who are seeking treatment to feel more comfortable with the perceived risk they are taking. The guide should also clearly outline the process for AHPRA's response if a practitioner is deemed to have failed to make a report. This information would improve the clarity of the mandatory reporting process and could reassure doctors that the reporting process will be efficient, fair and transparent.

1.2 Exemptions to reporting requirements

The Guidelines should include a separate section which explains the circumstances where a report is not required – for example, the mandatory notifications law does not apply to treating practitioners in Western Australia. This information is currently included, but should be more prominent in the document.

2. Address inconsistent use of terminology and define key terms

Much of the terminology used in the Guidelines around risk and harm will continue to create confusion due to a lack of clear definitions. Clear definitions of the terms used are essential when dealing with such a sensitive and highly complex issue. The following terms should be defined in plain English, in a clearly labelled appendix:

- Impairment
- Harm
- Substantial harm
- Material harm

- Low-level harm
- Insignificant harm
- Inconvenience
- Detrimental impact
- High, medium and low likelihood of harm
- Significant risk of harm
- Substantial risk of harm
- The difference between law and regulation

Once defined, it is important that the language used is consistent – for example, the terms significant and substantial risk are used interchangeably. This should be avoided, unless the two terms have distinctly defined interpretations.

3. Improve accessibility of information

Although we understand that the document is not designed to be read in its entirety, it is very detailed and repetitive, and therefore a daunting document to read. It is important that the information is made as accessible as possible to ensure that busy health professionals are encouraged to use it. It is expected that, over time, practitioners will share their own understanding of mandatory reporting via public and private discussion. It is important that these discussions are based on fact. Ensuring the information provided is accessible will assist in this area.

3.1 Structuring of the content

The Guidelines should be structured with the needs of those who will be accessing the information in mind. For example, a logical structure may be to divide the content into three sections:

- a. Colleague report
- b. Employer report
- c. Treating practitioner report

3.2 Additional resources

The content should be made available in a range of formats which summarise and organise the information for maximum accessibility. Development of support resources such as the below are recommended:

- a. a mobile application and/or interactive webpage which step through the important issues
- b. an e-learning module targeted to different audiences
- c. a one-page summary document
- d. frequently asked questions document.

4. Add additional detail to case studies and examples

The case studies included are helpful, however they are lost within the body of the document, and require more detail. For example, more detailed case studies should be included as an appendix, to outline the different ways a mandatory notification is, or is not, required.

5. Clarify risk grid charts and flow charts

The flow charts are a good visual representation of the mandatory notification process. However, the 'risk grid' charts are open to different interpretations. They require more detailed supporting examples, and are also subject to confusion due to the use of interchangeable terms – for example, material harm, versus substantial harm.

6. Ensure that health practitioners are encouraged and supported to seek advice when required

Given the concerns and uncertainty around the potential repercussions of mandatory notifications, the guidelines should encourage practitioners who are uncertain whether a report is required to seek confidential advice from a peer, or from their medical indemnity provider.

Appendix 2 - Feedback on the revised Guidelines

Areas from previous RACGP submission that have not been addressed

The RACGP has reviewed the public consultation document and identified several improvements which align to feedback provided in our submission of 31 July 2019. However, on review of the public consultation paper, we note that two key areas of feedback have not yet been addressed. The RACGP is eager to work closely with AHPRA and the National Boards and provide additional information to help support the below feedback being addressed within the Guidelines prior to publication.

The areas of feedback not addressed from the RACGP's July 2019 submission include:

1. AHPRA's processes

The Guidelines should include, or link to, a documented process for AHPRA's response to a mandatory notification. This will help practitioners who are seeking treatment to feel more comfortable with the perceived risk they are taking. The guide should also clearly outline the process for AHPRA's response if a practitioner is deemed to have failed to make a report. This information would improve the clarity on the mandatory reporting process and could reassure doctors that the reporting process will be efficient, fair and transparent.

2. Additional resources

The content of the Guidelines should be made available in a range of formats which summarise and organise the information for maximum accessibility.

The RACGP recommends that the following support resources are developed:

- a mobile application and/or interactive webpage which steps through the important issues concerning mandatory notifications
- an e-learning module targeted to different audiences
- a one-page summary document
- a frequently asked questions document.

Additional feedback received from RACGP members during public consultation period

3. Streamlining of content

While the new structure of the Guidelines is clearly set out, our members have recommend removal of some repetition. For example, the executive summaries currently read like an introduction. Streamlining the executive summaries to provide more of an overview of the content of each section would make them more useful.

4. Further examples or case studies

The below examples have been identified by our members as needing greater explanation within the Guidelines:

The term "good faith" should be clarified with examples of the types of notifications which may be deemed to have not been made in good faith. Additionally, it would be useful to include a link to the potential regulatory action for notifications not made in good faith.

Inclusion of an example or case study explaining what should happen when a concern (about a health professional or student) is disclosed by a patient would also be beneficial.

It is clear that a mandatory notification is not required based solely on rumour or hearsay. It is also clear that direct observation or knowledge of the matter is required to form a 'reasonable belief'. However, the process to act on knowledge obtained from a patient (who may or may not make their own report to AHPRA) is less clear.

5. Clarification of the purpose of voluntary notifications

Voluntary notifications play an important role and align with doctors' professional and ethical obligations. However, it should be made clear in the document that voluntary notifications, like mandatory notifications, should only be made when there is "sufficient grounds" supporting the notification. The negative impact of unnecessary notifications or vexatious complaints on the doctor cannot be overstated.

It is vital that AHPRA has a mechanism to deter and identify such complaints to ensure the protection of practitioners and an efficient use of notification resources and funding.