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Australian Health Practitioner Regulation Agency
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By Email: guidelinesconsultation@ahpra.gov.au

REVISIONS TO THE GUIDELINES FOR MANDATORY NOTIFICATIONS

Thank you for the opportunity to provide feedback in relation to the revisions to the *Guidelines for mandatory notifications*.

Established in 1925, MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. With over 25,000 Members, it works in close partnership with the medical profession on a wide range of issues which impact on medical practice. In addition to its advocacy and advisory services, MDA National's insurance subsidiary (MDA National Insurance) offers insurance policies to MDA National's Members which provide cover for the cost of investigations of professional misconduct and for claims for compensation by third parties.

MDA National provides the following comments in relation to the revised *Guidelines for mandatory notifications* (the revised Guidelines):

1. Protection for people making a notification

Section 237(2) of the National Law states that a person making a notification is not liable, civilly, criminally or under an administrative process, for giving the information to AHPRA. Section 237(3) states the making of the notification or giving of the information to AHPRA does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and no liability for defamation is incurred by the person because of the making of the notification or giving of the information.

MDA National submits that these legislative provisions do not "protect practitioners making mandatory notifications from legal liability" as stated in the revised Guidelines. In the case of *Lucire v Parmegiani & Anor* [2012] NSWCA 86, it is apparent that medical practitioners who make reports under the mandatory reporting provisions are provided with only qualified protection from civil litigation. Medical practitioners are not absolutely protected from defamation or other claims, and can be exposed to litigation for making mandatory notifications and complaints. While Section 237 of the National Law may provide strong protections for defending such civil litigation, the legislation does not prevent a person from commencing litigation against a practitioner who makes a notification.

MDA National submits that the wording in the revised Guidelines under the heading "Protection for people making a notification" should be amended to reflect the actual nature of the protections afforded by the National Law under Section 237.

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2. Seek independent advice

In view of the fact that making a mandatory notification is a serious step which should only be taken on sufficient grounds, MDA National believes that practitioners should be encouraged to seek independent advice about their notification obligations. This is especially important because the obligation to make a mandatory notification applies to the conduct or impairment of all practitioners, not just those within the practitioners' own health profession. Independent, professional advice will assist a health practitioner in making a decision about whether to report a colleague.

In about 60% of the mandatory notification cases closed in 2011 – 2012, the relevant board determined that no further action was required.¹ This suggests that practitioners who are making mandatory notifications may not be aware of the required threshold for making such a notification.

MDA National submits that the Introduction of the revised Guidelines should include the following statement:

"If you have any concerns as to whether you are obliged to make a mandatory notification, or need legal advice as to whether the conduct is notifiable, contact your professional indemnity insurer or other professional organisation. Legal advice provided to you will remain confidential".

Thank you for the opportunity to provide a submission in relation to the revised Guidelines.

Should you have any questions in relation to this submission, please do not hesitate to contact me.

Yours sincerely



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¹ The Australian Health Practitioner Regulation Agency and the National Boards, reporting on the National Registration and Accreditation Scheme, *Annual Report 2011-12*.