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Dr Joanne Katsoris
Executive Officer, Medical
Australian Health Practitioner Regulation Agency

Via email – bbvguidelines@ahpra.gov.au

Dear Dr Katsoris

MIGA submission – draft blood-borne virus guidelines

MIGA appreciates the opportunity to comment on the draft blood-borne virus guidelines for medical and various other health practitioners (**the draft guidelines**).

As a medical defence organisation and medical / professional indemnity insurer, MIGA does not take a position on the clinical indications and evidence for the draft guidelines. These are matters for those whose focus is on clinical issues.

MIGA's comments address medico-legal, regulatory and practical implications of the draft guidelines. These comments focus on their practicality for our members, clients and the broader healthcare professions, whilst acknowledging public safety remains the paramount consideration.

MIGA's position

MIGA is unconvinced there is a compelling case for the draft guidelines, particularly where

- It does not see the existing frameworks in place as being deficient
- There is an issue of broader professional appreciation of these frameworks that warrants addressing through concerted awareness and education efforts
- The draft guidelines impose new mandatory requirements on medical and other health practitioners, the breach of which could increase the chances of disciplinary or other regulatory action in relation to these issues, perhaps unnecessarily.

MIGA prefers Option 1 set out in the consultation paper, maintaining the status quo, but taking steps to improve broader professional awareness of existing frameworks as an alternative to new, additional guidelines.

It would support introducing the draft guidelines (Option 2) if there is clear and consistent support amongst clinical professional stakeholders for this option. It has provided some comments below into matters warranting clarification if this option is chosen.

Introducing mandatory guidelines

The Communicable Diseases Network Australia *Australian national guidelines for management of healthcare workers living with blood borne viruses and healthcare workers who perform exposure prone procedures at risk of exposure to blood borne viruses* (**the CDNA guidelines**) are a clear and practical framework for dealing with potential risks relating to blood borne viruses (**BBVs**) in the healthcare environment.

In advising and assisting its members and clients in these contexts, MIGA refers them to the CDNA guidelines. From this experience it has not identified any deficiencies around current professional understanding and practice.

It believes the CDNA guidelines are not well-known outside practitioners and organisations who deal with these issues on a recurring basis.

Given comparative shortcomings in broader professional appreciation of the CDNA guidelines, MIGA would support a targeted awareness and education campaign amongst the medical and other affected health professions.

The draft guidelines introduce a number of mandatory requirements for medical and other health practitioners who undertake exposure prone procedures (**EPPs**), particularly triennial testing for BBVs and registration declarations of CDNA guidelines compliance. This raises important issues around perception / interpretation, oversight and access to appropriate care.

The term 'guidelines' is essentially inconsistent with a mandatory obligation. Consideration should be given to a different title, perhaps 'standard' or 'code'. Even 'policy' would be more consistent with mandatory obligations than 'guidelines'.

A nuanced, risk-based approach is imperative for non-compliance with the draft guidelines, particularly around registration declarations, requirements for triennial testing and following treating practitioners' advice.

MIGA would like to see inclusion of clear 'reasonable excuse' provisions for non-compliance in the draft guidelines. At present, the only recognition of this is in cl 6.3, relating practitioners with BBVs failing to attend appointments or undergo testing without prior notice and adequate justification.

A policy on draft guidelines compliance should be developed with input from key professional stakeholders, including professional indemnity insurers.

MIGA is concerned that the mandatory nature of the draft guidelines could operate as a barrier to practitioners who undertake EPVs, or who have BBVs, seeking appropriate care for fear it may end their career.

Analogous concerns arose around treating practitioner mandatory reporting, which offers potential lessons and starting points for this situation.

The risk of comparable barriers to practitioners seeking appropriate care in the BBV context is real and needs to be considered carefully.

In the mandatory reporting context MIGA has appreciated the efforts of AHPRA, the professional boards and a wide range of stakeholders in working together to try and remove these barriers around practitioners seeking appropriate help.

An appropriate starting point in this context may be concerted messaging and education efforts around this issue, developed with input of key professional stakeholders, including professional indemnity insurers.

Draft guidelines – structure and awareness

It would be helpful for the draft guidelines to contain an executive summary with key messages, including

- The circumstances the guidelines cover and do not cover
- Their requirements at a glance – for each of practitioners undertaking EPPs, practitioners living with a BBV and their treating practitioners
- What to do when uncertain (i.e. liaise with appropriate specialists, professional college / association and / or professional indemnity insurer)
- A practitioner or student with a BBV can continue to practice if they comply with the CDNA guidelines
- A practitioner should not be deterred from seeking appropriate medical care and professional advice
- A treating practitioner whose patient practitioner is infected with a BBV would only need to consider a mandatory report to AHPRA if there was non-compliance with the draft guidelines putting the public at substantial risk of harm (reflecting the new treating practitioner mandatory reporting obligation involving impairment expected to be introduced soon).

Introduction of the draft guidelines would represent a change of expectations for medical and other affected health practitioners, particularly mandatory compliance with the CDNA guidelines, including triennial BBV testing of certain practitioners. This makes early, clear communication to the affected professions an imperative, together with a central 'hub' on the AHPRA website for resources and educational material.

Given the length of the CDNA guidelines, where practitioners performing EPPs are required to declare compliance with them on registration (cls 8.4 to 8.5 of the draft guidelines), it would be helpful to produce a CDNA guidelines key facts sheet or similar. This would give the best chance of ensuring all practitioners understand their CDNA guidelines obligations. A CDNA key facts sheet should incorporate circumstances where a practitioner with a BBV not complying with CDNA guidelines should declare an impairment on registration (cl 8.1 of the draft guidelines).

Draft guidelines – individual provisions

In relation to individual provisions of the draft guidelines, MIGA makes the following comments

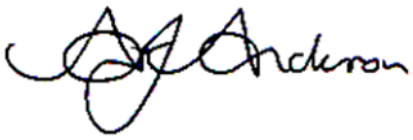
- **Treating practitioner reporting practitioners with BBVs to AHPRA** (cls 5.3, 6.3 to 6.4)
    - From the draft guidelines, when a mandatory report is required is somewhat unclear
    - They appear to create a mandatory reporting obligation for certain circumstances set out in cl 6.3, but then indicate there may be a broader mandatory reporting obligation under the *Health Practitioner Regulation National Law* – this is confusing and appears unintentional
    - MIGA proposes that the clauses be reworded to explain more clearly that where a practitioner or student living with a BBV who does not comply with CDNA guidelines without reasonable excuse there may be a mandatory reporting obligation on their treating practitioner, but noting the existence of the exemption for treating practitioner mandatory reporting in Western Australia
    - The examples of mandatory reporting circumstances in cl 6.3 would be a helpful basis for case studies which could be developed within the draft guidelines as circumstances where a report is likely to be required under National Law treating practitioner mandatory reporting obligations
    - There should also be a web link to the AHPRA mandatory reporting guidelines in the final version of the guidelines
- **No AHPRA notification if complying with CDNA guidelines and treating practitioner's advice** (cl 5.4)
    - This provision may cause confusion, as it could be read as suggesting a self-notification obligation which, outside renewal declarations, does not exist under the *Health Practitioner Regulation National Law*
    - MIGA does not endorse practitioners putting the public at substantial risk of harm, but believes reformulation of cl 5.4 is required
    - The provision should be reframed along the lines of
        Registered health practitioners and students living with blood borne viruses will not need to ***declare their infection on initial registration or renewal*** *if they are following their treating practitioner's advice and have complied with, and are continuing to comply with, the CDNA guidelines*
- **Treating practitioners seeking advice** (cl 6.2)
    - To the sources of advice which treating practitioners can obtain, each of appropriate colleagues, professional colleges / associations and professional indemnity insurers should be added
    - This would be for the purposes both of setting out additional sources of advice and to avoid any misunderstanding that treating practitioners can only seek advice from a public health authority
- **Publishing conditions** (cl 7.3)
    - As raised in other contexts, MIGA remains concerned that the notation on the public register that a practitioner's registration is subject to conditions is a tacit indication that they suffer from a health condition
    - Health-related practice conditions are the only common circumstance where the existence of conditions is noted on the public register, but they are not detailed
    - MIGA believes the reference to conditions being in place in these circumstances is inappropriate and unnecessary. It potentially causes an unwarranted loss of conference in the practitioner by their patients, colleagues and the community where the risk is being managed appropriately by the relevant professional board.

In addition, the following provisions of the CDNA guidelines are potentially problematic

- **Workplace requirements** (p17)
  - The nature of a healthcare facility's supervision arrangements or other measures may represent conditions or restrictions on practice reportable to AHPRA by the practitioner under s 130 of the National Law
  - MIGA believes this would be an unintentional and undesirable outcome where the risk is being appropriately managed at a local level
  - It sees a need to develop guidance with the CDNA, other professional bodies, state health and territory departments and professional indemnity insurers around handling these matters to avoid unnecessary AHPRA notifications in circumstances where a practitioner is working with a healthcare facility to ensure appropriate arrangements are in place
- **Description of treating practitioner mandatory reporting** (p18)
  - The indication that a treating doctor has a responsibility to "[c]*onsider notification of the* [healthcare worker] *to AHPRA under provisions of the National Law, particularly if the* [healthcare worker] *is putting the public at risk and a mandatory notification is therefore necessary.*" – this is an ambiguously worded provision which could be interpreted as imposing a broader mandatory reporting obligation than that under National Law treating practitioner obligations
  - It also fails to mention the obligation does not apply in Western Australia
  - It would be preferable to indicate in the draft guidelines that any consideration of mandatory notification for a practitioner with BBV should be considered by reference to AHPRA's mandatory notification guidelines, noting the Western Australian exemption
- **EPP definition** (pp40-41)
  - The definition of EPPs leave residual uncertainties and grey areas
  - MIGA suggests the draft guidelines definition of EPPs include reference / web link to the CDNA's further guidance on this issue - *Guidance on classification of exposure prone and non-exposure prone procedures in Australia 2017*[1] – this is considerably more detailed than the CDNA guidelines.

If you have any questions or would like to discuss, please contact Timothy Bowen, [redacted] / [redacted].

Yours sincerely



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[1] Available at www1.health.gov.au/internet/main/publishing.nsf/Content/36D4D796D31081EBCA257BF0001DE6B7/$File/8guide-exposure-non-procedure.pdf