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AHPRA

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Dear Mr Lord

## **MIGA submission – draft Guideline for Informing a National Board about where you practice**

MIGA welcomes the opportunity to provide feedback on the draft Guideline for Informing a National Board about where you practice (**the draft guideline**).

This feedback follows MIGA's earlier submissions to the COAG Health Council, Queensland Health and Queensland Parliamentary consultations on proposed legislative reforms underpinning the draft guideline.

### **Issues with scope of practice information requests**

In its earlier submissions, MIGA supported the proposed s 132 of the *Health Practitioner Regulation National Law* (the National Law) as generally reflective of current practice of regulators requesting practice information covering the range of contexts in which doctors and other health practitioners work. It remains concerned to ensure that practice information requests are appropriate and that unnecessary requests are avoided.

MIGA is troubled by the scope for practice information requests under s 132(1) and (4)(a) of the National Law, where a doctor or other health practitioner is self-employed and merely shares premises and their cost with other practitioners. It accepts the Board appropriately has power to require practice information where practitioners interact with each other in providing health care, or where there is some form of control or supervision. It does not see the mere sharing of costs of premises involving such interaction, control or supervision. Accordingly it does not see requests for practice information in this context as necessary or appropriate, reflective of the underlying intent of the National Law amendments or justified given the impact they would have on a practitioner's privacy. Given these considerations, it is important that the draft guideline focuses on collection of practice information which is reasonable and appropriate.

### **2. Why does the National Board need to know where you practice?**

MIGA has concerns about the sentence "*For example, knowing where a practitioner practises is useful in assessing how much ongoing support and supervision is available in the workplace*" (page 1, final paragraph).

Practice information requests under s 132 of the National Law are generally used to monitor ongoing compliance with conditions imposed on practice, or in the context of a notification about a doctor or other health practitioner. These are generally where there are concerns about their practice. The proposed sentence could give the impression that Boards are contemplating the collection of practice information in a broader range of circumstances. Whilst s 132 of the National Law may ultimately be relied on in the context of the Medical Board's new Professional Performance Framework, this draft guideline is not a context for dealing with that issue.

MIGA proposes that the sentence be reworded to read "*For example, when a notification has been made about a practitioner and the Board has decided to take action, knowing where a practitioner practises is useful in assessing how much ongoing support and supervision is available in the workplace*".

The sentence "*National Boards also have the discretion to provide this information to other practitioners who share premises, including the costs of those premises, with the registrant*" (page 2, first paragraph) does not necessarily reflect the wording of the new s 132 of the National Law.

The provision only contemplates possible collection of practice information if there is both sharing of premises and the costs of those premises. The proposed sentence could be read to indicate a request for practice information is not conditional on the costs of the premises being shared.

The sentence should be reworded to read "*National Boards also have the discretion to provide this information to other practitioners who share premises and the cost of those premises with the registrant*".

MIGA has concerns about the sentence "*The disclosure of information about health, conduct and performance action taken by National Board helps protect the public by ensuring that those who have a role in monitoring and supporting practitioners are aware of action being taken*" (page 2, first paragraph). This could potentially create obligations on the recipients beyond their mandatory notification obligations under Part 8, Division 2 of the National Law.

It is unclear why doctors and other health practitioners who merely share premises and their cost with a practitioner the subject of a disclosure should have any role in monitoring and supporting the subject practitioner. Without a degree of control, supervision or clinical interaction, it is difficult to justify imposing such roles. The proposed sentence, implying a possible role, suggests there may be certain, undefined obligations on those practitioners. If any such role was proposed, this should be subject to consultation with professional stakeholders such as MIGA.

Accepting employers and other persons or entities who exercise a degree of control or supervision over the health care of a doctor or other health practitioner do have a role in monitoring and supporting them, the sentence should be reworded to read "*The disclosure of information about health, conduct and performance action taken by a National Board helps to protect the public by ensuring those such as employers or other entities for or on behalf of whom a practitioner provides a health service and who have a role in monitoring and supporting practitioners are aware of action being taken*".

#### **4. When can you be required to provide your practice information?**

Referring to a Board having discretion to request practice information "*at any time*" (page 3, first paragraph) can give the impression that a Board may choose to exercise that discretion in a wider range of circumstances than is currently the case.

MIGA proposes that a new third sentence be inserted at the end of the paragraph, reading "*Such notices are generally issued after a notification is made about a registered health practitioner and a Board has decided to take action in response to that notification.*"

#### **5. Can you refuse to provide your practice information?**

MIGA proposes that a further example of a situation where a doctor or other health practitioner cannot comply with a practice information notice by the due date (page 3, sixth paragraph) include where it has not come to their notice for some time after it was sent, whether that be due to leave or delayed receipt.

MIGA is troubled by the reference to potential disciplinary proceedings in the event a doctor or other health practitioner fails to comply with practice information notice without reasonable excuse (page 3, second last paragraph). The need for such action would be rare, if ever, limited to cases of persistent, serious and deliberate non-compliance. The proposed wording may give an impression that disciplinary proceedings would be more frequently contemplated.

It proposes that the final sentence in the paragraph be reworded to "*This means the National Board may take relevant action under the National Law, which in cases of serious, persistent and deliberate non-compliance without a reasonable excuse may include disciplinary proceedings.*"

## 6. What information needs to be provided?

The provision of examples of situations where practice information should be provided, and what should be provided, are helpful.

To address the same issues set out above on the scope for requesting practice information in the context of sharing premises with other practitioners, the second example of practice information given (page 4, second paragraph) should be reworded to read "... practitioners with whom the practitioner shares premises and the cost of those premises."

### **Practitioners who provide health services under a contract, agreement or other arrangement**

In terms of providing name, address and contact details of each entity for whom a doctor or other health practitioner provides health services under contract, agreement or other arrangement, MIGA has seen situations where provision of such information has led to disclosures being made under s 206 of the National Law to a wider range of persons than the Boards contemplated or which would be considered necessary.

For example, giving a hospital's name, address and contact details may lead to subsequent disclosures passing through a variety of hands after receipt by the hospital in order to determine the right recipient. This unduly affects a practitioner's privacy, particularly where sensitive information may be involved.

MIGA proposes adding a further sentence before the examples to read "*In order to ensure that only the appropriate person/s within an entity are contacted by a National Board, practitioners should provide one or two contact persons, who would typically be a chief executive officer, practice owner, director of medical or clinical services, or head of department.*"

Similar inclusions should also be made in relation to practitioners who provide services for, or on behalf, of an entity in a paid, voluntary or honorary capacity, and in relevant parts of Appendix A.

### **Appendix A – practice information – quick reference summary**

The example of a health practitioner who is a volunteer office bearer of industry body that has a role in relation to the governance of health profession is somewhat unclear.

Given the range of professional organisations that doctors and other health practitioners may be involved in, it can be difficult to determine when such organisations have 'governance' roles and who is an 'office bearer' in such organisations. Further guidance on this would be helpful.

If you have any questions or would like to discuss, please contact [REDACTED]

Yours sincerely



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[REDACTED]