



Australian  
Nursing &  
Midwifery  
Federation

Submission to consultation by the Nursing and Midwifery  
Board of Australia on: Guidelines for the regulatory  
management of registered health practitioners and  
students infected with blood-borne viruses

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## Introduction

Established in 1924, the Australian Nursing and Midwifery Federation (ANMF) is the largest professional and industrial organisation in Australia for nurses and midwives, with Branches in each State and Territory of Australia. The core business of the ANMF is the professional and industrial representation of our members and the professions of nursing and midwifery.

With a membership of over 240,000 nurses, midwives and assistants in nursing, our members are employed in a wide range of enterprises in urban, rural and remote locations in both the public and private health and aged care sectors.

The ANMF participates in the development of policy relating to: nursing and midwifery practice, professionalism, regulation, education, training, workforce, and socio-economic welfare; health and aged care, community services, veterans' affairs, occupational health and safety, industrial relations, social justice, human rights, immigration, foreign affairs and law reform.

As the largest professional and industrial organisation in Australia, the ANMF has, on behalf of our members, a genuine interest in all aspects relating to health care workers exposure to, and subsequent contracting of, blood borne viruses (BBVs). Our members provide clinical care in a wide range of settings where there is potential for contact with infective organisms, across metropolitan, regional, rural and remote locations in both public and private health and aged care sectors.

## General Comments

The ANMF is pleased that AHPRA is completing this consultation on health care workers and blood borne viruses (BBVs). We welcome the opportunity to participate in the consultation on the *Guideline for regulatory management of registered health practitioners and students infected with blood-borne viruses* (AHPRA BBV guideline).

The ANMF supports AHPRA and the Nursing and Midwifery Board of Australia (NMBA) in providing guidance to nurses and midwives on evidence informed practise for the management of BBV's. It is essential that nurses, midwives and employers are clear on their responsibilities in this area and are provided access to information when changes occur. Tuberculosis and its management is another area where this type of information and clarity would be useful.

From a professional and industrial perspective the ANMF considers the Communicable Diseases Network Australia's (CDNA), *Australian national guidelines for the management of health care workers known to be infected with blood-borne viruses* (Australian Guidelines) to provide clear guidance for both the nurse, midwife and employer. The ANMF strongly supports the sentiment expressed in the paragraph under guiding principles in that document that states:

*While protection of the public's health is paramount, employers of health care workers must also consider, and comply with, relevant anti-discrimination, privacy, industrial relations and equal employment opportunity legislation.<sup>1</sup>*

<sup>1</sup> Communicable Diseases Network Australia. 2012. *Australian national guidelines for the management of health care workers known to be infected with blood-borne viruses*. Available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/cda-cdna-bloodborne.htm>

As members of the public, nurses and midwives have the right to be protected. Nurses and midwives, as employees, also have rights and obligations under Occupational Health and Safety laws.

### Prevention and Protection

The ANMF identifies that all Australian health care services must have Standard Precautions and effective infection control strategies in place as per current National Health and Medical Research Council (NHMRC) guidelines. This is part of the employers obligation to provide a healthy and safe working environment to prevent or reduce the risk of exposure to body fluids, secretions, sharps injuries and excretions and prevents the transmission of infections from person to person within the health service. The employer has a responsibility to provide resources, information, training and equipment to ensure a safe working environment and that includes testing, vaccinations and treatment where required.

The ANMF does not support mandatory testing of blood borne viruses for all nurses and midwives. However, we do support the Australian Guideline, which uses the language of 'encouraging' as follows in this example:

*HCWs who perform EPP's (Exposure-prone Procedure) should know their BBV status and be encouraged and supported to undergo regular testing.*

This approach will facilitate both health promotion for the nurses and midwives themselves and assist in protecting the public.

The AHPRA BBV guidelines need to be explicit in stating that testing for BBVs is not mandatory for all nurses and midwives and where testing is recommended it needs to be:

- accessible, enabling nurses and midwives choice in who conducts the testing
- free of charge
- confidential, and
- undertaken by an appropriately qualified health practitioner who can also provide treatment options.

This is consistent with access to immunisation. The ANMF supports policy for employers to encourage their staff to be vaccinated against preventable BBV, including hepatitis B virus (HBV) where a nurse or midwife has no documented evidence of pre-existing immunity (from natural infection or prior vaccination) and for screening to ensure they are assessed for immunity post-vaccination.

Employers of nurses and midwives who have been exposed to a BBV through their work have a legal obligation to provide support, cover the cost of treatment and vaccination and provide access to, and pay for, counselling, if they have a positive test result.

## 1. Is the guideline necessary?

It is important to consider scientific evidence, of the probability of transmission from HBV, HCV and HIV infected health practitioners to patients during exposure prone procedures (EPP) when considering this guideline. While these probabilities are usually very low, they are not zero<sup>2</sup>. The ANMF acknowledges that, even where an infected health practitioner is taking appropriate precautions and responding successfully to any treatments, there remains a minimal risk. The National Boards are entrusted with protecting the safety of the public and the ANMF supports exercising some caution in addressing the issue of health practitioners with BBVs.

The ANMF considers that the current *Australian Guideline for the Management of Health Care Workers Known to be Infected with Blood-Borne Viruses* [Australian Guideline] adequately covers the requirements for registered health practitioners and other health care workers.

The ANMF is supportive of AHPRA taking responsibility to provide accurate, contemporary information to health practitioners in order for them to ensure their practice is in accordance with the Australian Guideline.

Furthermore, we consider there ought to be an awareness raising role for AHPRA to ensure all registered health practitioners know about the Australian Guideline; and, that it is readily accessible to all registered health practitioners through the websites of all National Boards.

The AHPRA BBV guideline acknowledges that as the regulator they are not experts in the field of BBVs. As stated above, the ANMF supports AHPRA's approach in referring to the Australian Guideline for the relevant contemporary information. However, if AHPRA continue to progress this approach it is essential that the AHPRA BBV guideline does not needlessly repeat information and change the intention or tone of the Australian Guideline. Where this has occurred it creates inconstancy and confusion between the two documents.

To illustrate this point, the Australian Guideline is presented in a supportive and self-regulatory manner. Where the AHPRA BBV guidelines have repeated information from the Australian Guideline however, the tone has become one of mandatory regulation. An example of this is on page 10 of the AHPRA BBV guideline where it states:

*All registered health practitioners and students **should** know their blood-borne virus status. If they have a blood-borne virus, they **must** seek and **accept** expert advice on the safe limits of their practice and **must** comply with the CDNA guidelines (underlining is our emphasis).*

The ANMF suggest that the AHPRA BBV guideline needs to explain how the National Boards will evaluate the compliance of health practitioners with a BBV who are working in EPP areas of practice, against the Australian Guideline. A simplified flow chart and brief explanatory statement as part of the guideline would be helpful.

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<sup>2</sup> The Canadian Medical Protective Association: Physicians with blood borne viral infections: Understanding and managing the risks <https://oplfprd5.cmpa-acpm.ca/-/physicians-with-blood-borne-viral-infections-understanding-and-managing-the-risks> Accessed 01.09.14.

The AHPRA BBV guideline needs to clearly articulate how changes to the Australian CDNA guidelines will be managed. The background to the AHPRA BBV guidelines correctly outlines how the information regarding BBVs is *rapidly evolving and that the National Boards need long lead in times to amend guidelines. By requiring practitioners to comply with the Australian Guideline, this gives assurance the information will be up to date and changes can be effected as soon as they are endorsed.* It is essential that AHPRA has a clearly articulated process in place to ensure any changes made to the Australian CDNA guidelines includes wide ranging consultation with all relevant stakeholders and any changes are supported by the nursing and midwifery professions.

## 2. Is the content of the guideline helpful, clear and relevant?

While the draft AHPRA BBV guideline lacks clarity in some areas (outlined below in question 3), it is relevant. As identified earlier any needless repetition of content from the Australian Guideline should be removed to prevent confusion.

## 3. Is there any content that needs to be changed, added or deleted in the guideline?

Yes, details are as follows:

- The AHPRA BBV guideline is too lengthy and requires condensing as much of the material is contained within the Australian Guideline.
- The ANMF supports the addition of the specific nursing and midwifery EPPs examples being provided, as proposed in the AHPRA BBV guideline,
- Second paragraph, p3 - consider clarifying the term 'delegated decision-makers'
- Dot point 2, page 10 – under the heading **GUIDANCE for all Registered Health Practitioners and Students:**
  - Recommend that this point be deleted as it is inconsistent with the Australian Guideline. The Australian Guideline recommends *...all health care workers, including trainees and student health care workers involved in EEP's have a professional and ethical responsibility to be voluntarily tested annually for BBVs, and immediately after potential acute exposure associated with a risk of disease acquisition.*
- Dot point 3, page 10 – in the first line - remove the word 'may'.
- Dot point 4, page 10 – suggest a change to read: *not every 'sharps injury' requires testing, rather only contaminated or potentially contaminated sharps injuries.*
- Dot point 5, page 10 – the suggestion that *"and if they are potentially infectious should seek counselling on career options"* may be unreasonable. This would assume they remain infectious at all times which is inaccurate. Recommend that the last line of this paragraph be reviewed and the words *'...should seek counselling on career options'*, be deleted and replaced with *'...seek advice about professional practice limitations for the health practitioner; or 'safe limits of practice'.* Testing should not be used to exclude students from studying nursing or midwifery; advice should be available to students to enable them to work within the Australian Guidelines.

- Page 10, under heading **Registered Health Practitioners & Students with BBV**
  - Dot Point 2
    - We suggest that “...suitably qualified specialist medical practitioner...”, should also include ‘accredited, specialist general practitioner’, as these GPs are also able to provide complete care for an individual with a BBV.
    - Needs to only make reference to complying with Australian Guideline;
- Page 11, under the heading, **The Board’s response to a Registered Health Practitioner or Student with a BBV;**
  - Dot point 2
    - Recommend amending by removing the bracketed section on line 1. The impairment is the point for the potential notification, not the HIV infection per se.
  - Dot point 4
    - Delete the word “Usually” in line 2.
    - This paragraph is confusing, because if the health practitioner is compliant with the Australian Guideline and is not placing the public at risk, there is no undertaking or imposition of a condition on the health practitioner’s practice. Should the Board determine there are other issues that may warrant an undertaking or the imposition of a condition upon a health practitioner, then that is a separate matter.
- Page 11: Under heading - **Treating Doctors**
  - The first dot point in relation to Exposure Prone Procedures (EPP), should state that the treating practitioner notifies AHPRA and the relevant National Board, only if there is a breach of the Australian Guideline. The rest of this paragraph is not required and creates confusion.
- Page 12: Under heading – **Other Relevant Regulatory Aspects**
  - Dot point 1, while the ANMF does not disagree with this point, it will be potentially confusing to registered health practitioners with impairments as this is the only definition being provided by AHPRA, to outline what impairment means in relation to BBV and EPPs. This statement needs to be clarified to make it explicit that only nurses and midwives who are not complying with the Australian Guidelines should make a positive declaration at renewal.
  - Dot point 2: the ANMF is concerned that this in effect represents mandatory testing for all nurses and midwives. If this is the intent, then we could not support this statement.
- Page 12 **Definitions** - Blood borne virus: consider deleting ‘typically’.

4. Do you agree with the proposal that Boards expect registered health practitioners to comply with the CDNA guidelines for the management of health practitioners infected with a blood-borne virus? That includes following advice in their scope of practice based on the CDNA guidelines?

The proposal of AHPRA and National Boards to ask registered health practitioners to comply with the Australian Guideline is appropriate. As identified earlier the ANMF supports the Australian Guideline and believes these guidelines are comprehensive, focusing on all aspects of protecting the public and not just placing sole responsibility on the health care worker. The examples of EEP's are useful.

By asking nurses and midwives to comply with the Australian Guideline, AHPRA and the National Boards must have a clearly articulated position on how changes to the Australian Guideline document will be managed. This should include wide ranging consultation with all relevant stakeholders. Any changes made to the Australian Guideline need to be supported by the nursing and midwifery professions.

The Australian Guideline needs to continue to find a balance between protecting the public and protecting registered health practitioners. At times there may be a tendency to exaggerate the potential and actual risks of transmission of BBVs to patients and to unfairly and unnecessarily restrict or curtail the work practices of health practitioners. This has the effect of potentially denying them the ability to practise in their profession and limit the care they may ordinarily provide to patients. On the other hand, there may also be occasions where the risk of transmission of a BBV is real and, in the interests of patient safety, appropriate measures should be taken to mitigate any risk to an acceptable level<sup>3,4,5</sup>

5. Do you believe that there is any conflict between these guidelines and any other guidelines for the management of practitioners infected with a blood-borne virus? Is there any conflict with any obligations that may arise in the workplace?

Generally the guidelines are similar to other countries' guidelines in relation to health practitioners and BBV's. There is however, a high potential for the AHPRA BBVs guidelines to be at odds with the operational policies and procedures of some Australian health services, at the local level. We are concerned about the reference to the situation arising where a health practitioner continues to work in their usual manner/role, and comes across an EPP, as the employer has an obligation to ensure that there is an 'unrestricted employee' available at all times. The ANMF is concerned that in some health care settings, in particular some rural/ remote work sites, or health care settings where there is only one health care practitioner, this requirement may be unlikely or impossible to achieve, and furthermore, requires disclosure of a health practitioners BBV status to the employer. The disclosure of the BBV status of the health practitioner, if they undertake EPP, is not in question. Our concern is that this may then require other health practitioners to disclose their BBV status even when they do not undertake EPP.

<sup>3</sup> The Canadian Medical Protective Association: *Physicians with blood borne viral infections: Understanding and managing the risks* <https://oplfprd5.cmpa-acpm.ca/-/physicians-with-blood-borne-viral-infections-understanding-and-managing-the-risks> Accessed 01.09.14.

<sup>4</sup> Scotland Health. *Blood Borne Viruses*. <http://www.healthyworkinglives.com/advice/workplace-hazards/bbvs> Accessed 01.09.14.

<sup>5</sup> Australian Society of HIV Medicine [ASHM], 2012: *Emergency Service Providers and Blood Borne Viruses* [http://www.ashm.org.au/images/PDFS/publications/1976963389\\_ESPBVV\\_booklet.pdf](http://www.ashm.org.au/images/PDFS/publications/1976963389_ESPBVV_booklet.pdf) Accessed 01.09.14.

It would be difficult to be cognisant of all practices and policies within organisations however conflict of obligations cannot be ruled out. There could be instances of discrimination or breach of privacy. At all times there should be adherence to legislation.

## 6. Is it reasonable and appropriate for the Board to take regulatory action only if a practitioner who is infected with a blood-borne virus is placing the public at risk?

As one of the obligations of the National Boards is to 'protect the public' it is reasonable that the National Boards take action under the National Law where a health practitioner has deviated in their practice from the criteria outlined in the Australian Guideline. Where there may be future changes to the Australian Guideline it would be incumbent on the National Boards to review and amend their guidelines to reflect contemporary evidence on this issue.

AHPRA should refer to the definitions included in the Australian Guideline regarding the definition of BBVs and those considered high risk.

## 7. Do you have any other comments on the guideline?

As identified earlier in this submission the AHPRA BBV guideline should not needlessly repeat content of the Australian Guideline, only make reference to the Australian Guidelines.

The matter of notifications should clearly and only make reference to a health practitioner who is not complying with the Australian Guideline. Providing further explanation on this matter can create confusion.

In the event that the National Board takes further action (for example, investigation of a health practitioner regarding their compliance with the Australian Guideline), information should be provided in the AHPRA guideline as to how the health practitioner's rights, in this circumstance, will be maintained.

## Conclusion

The ANMF appreciates the opportunity to participate in the consultation of the *Guideline for regulatory management of registered health practitioners and students infected with blood-borne viruses* (Australian Guideline).

The ANMF supports AHPRA and the NMBA in their endeavour to provide guidance to nurses and midwives regarding evidence based practise for health practitioners infected with a BBV.

The Communicable Diseases Network Australia's (CDNA) *Australian Guideline for the management of health care workers known to be infected with blood-borne viruses* provides clear guidance for the nurse, midwife and employer.

The ANMF supports the AHPRA BBV guideline referring to the Australian Guideline, and, a notification only being made if a nurse or midwife does not comply with the Australian Guideline.