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18th November, 2018

Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee,
Parliament House,
George Street,
BRISBANE QLD 4000

Email: health@parliament.qld.gov.au

Dear Committee Secretary,

**Submission to the Queensland Parliament Committee reporting on the
Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018**

The Queensland Doctors' Health Programme (QDHP) welcomes the opportunity to provide this submission to the inquiry regarding the Queensland Parliament Committee reporting on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018.

We understand that the objectives of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018 are to:

- amend the Health Practitioner Regulation National Law (National Law) as agreed by the Council of Australian Government (COAG) Health Council on 12 October 2018 to:
 - introduce reforms to mandatory reporting by treating practitioners, to ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm, and
 - double the penalties for holding out and related offences under the National Law from \$30,000 to \$60,000, and introduce a maximum imprisonment term of three years for the most serious offences

makes consequential amendments to the Queensland local application provisions of the *Health Practitioner Regulation National Law Act 2009* (Qld) to:

- align Queensland's approach to mandatory reporting by treating practitioners with the approach in the National Law by removing a Queensland-specific provision, and
- provide for circumstances in which the holding out and related offences are prosecuted on indictment and summarily in Queensland, and

Make consequential amendments to the *Ambulance Service Act 1991* (Qld) and *Hospital and Health Boards Act 2011* (Qld).

This submission focuses specifically on the amendment's objective to:

“introduce reforms to mandatory reporting by treating practitioners, to ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm”.

QDHP is the lead organisation in physician health in Queensland. Our organisation has extensive expertise in answering the help-line that doctors and medical students call when they are in distress. We have extensive experience treating doctors, providing care for doctors and medical students seeking health care as well as linking doctors to other health care providers for further care.

The service offered by QDHP is made possible by our volunteers and executive who have extensive experience in relation to research regarding physician health and specifically in health access of medical practitioners. This knowledge is reflected in the clinical experiences which are garnered from calls to the help line. QDHP's submission to this committee is informed by this wide-ranging expertise and direct knowledge.

It is the opinion of the executive of QDHP that the legislation in its current form will not meet the stated objectives to ensure that health practitioners will have confidence to seek treatment for health conditions. As such, QDHP is concerned that the proposed draft amended legislation will fail to maximise the public's protection from harm. The Executive is also concerned that the proposed legislative changes fail to address the recommendation that the mandatory obligations within National Law be consistent across jurisdictions.

In this submission, QDHP wishes to highlight the following six key points in support of its submission that the amendments should not be passed in their current form:

1. The international literature is clear that the health of the health practitioner is strongly linked to the health of those they care for. The delivery of safe health care to the community is dependent on the wellness of the clinician. When health practitioners experience barriers to their health access, the quality of care they deliver is potentially compromised.

Considering the evidence on physician health, when burnout, stress and depression remain untreated, there is a strong association with reduced quality of care such as increased medical errors, increased unprofessional behaviours, reduced empathy in care delivery and reduced patient satisfaction.

When there are significant barriers to health access for doctors, their mental health issues can be magnified. Doctors are trained to put patients first, rather than attend to their own health. This results in presenteeism; where the doctor continues to work, dismissing their own health issues while their patients are cared for, despite their personal struggle with their own health issues.

The barriers to health access for doctors have been well-described. Regulatory barriers have been clearly documented as a significant contributor to poor health access for doctors.^{1,2} Mandatory reporting has been specifically identified as an important barrier to health access.^{3,4} The literature supports the numerous calls for the mandatory reporting obligation to be removed.

The impact of mandatory reporting reducing health access for doctors was specifically identified as a significant concern after a number of physician suicides occurred early in 2017.⁵ At the National Forum on the Prevention of Physician Suicide in Sydney, in September, 2017, the barriers to health access caused by the current mandatory reporting legislation were highlighted.⁵ In Western Australia, where there is an amendment (WA amendment) that provides an exemption for the treating health practitioner, this health access barrier has been effectively addressed.⁶

The report of this forum included a consensus agreement of the participants at the time (which included medical colleges, departments of health and medical defence organisations) that the WA amendment be adopted nationally. This consensus was in line with previous calls from medical professional bodies that the mandatory reporting obligations be removed for the treating health practitioner.

2. The Coalition of Previous discussions about mandatory reporting requirements led to Australian Health Ministers' Advisory Council (AHMAC)'s commissioning of Snowball's "Independent Review of the National Registration and Accreditation Scheme for health professions" in December 2014. This report clearly recommended that "The National Law to be amended to reflect the same mandatory notification exemptions for treating practitioners established in the Western Australian law." (Recommendation 10).⁷

Council of Australian Governments (COAG) Health Council failed to adopt Recommendation 10 and considered further research to be necessary. Since then, research has focused on those who had been reported. Such research fails to capture the very important issues related to the failure to doctors seeking health care in a timely manner. Snowball's report was an extensive investigation with the very clear recommendation that that the Western Australian exemption was the preferred option.⁷

The doctors' health services often field anonymous calls from doctors who are concerned about seeking health care and seeking advice. Many of the callers to our service voice concerns about mandatory reporting. Even when the health issue they are experience does not appear to warrant such concern, doctors continue to express concerns about accessing health care due to fear of being reported if they were to be diagnosed with depression or anxiety.

These concerns are not assisted if legislation is complex and difficult to interpret. This is particularly so for a person who is suffering from a mental health condition. In such circumstances, QDHP submits that it would be preferable, for both the public and the health practitioner, for the legislation to reflect the Western Australian model.

The Western Australian model offers clarity for both treating practitioners and health practitioners seeking care. The proposed amendments require careful and complex interpretation. QDHP is concerned that the proposed amendments may encourage practitioners in crisis to avoid seeking health care in a timely fashion.

3. Evidence suggests that other recent legislative amendments to the Queensland legislation in relation to mandatory reporting obligations for treating doctors in Queensland have failed improve access to health care by medical professionals. This may be because changes to the tense of the wording and changes add to the complexity of the mandatory reporting legislation. While it may be argued that there were theoretical reasons why the health access should have improved, doctors remain concerned and hesitate when seeking treatment for health conditions. Our service has continued to receive calls related to these concerns, despite these changes being in place for some time.
4. Recommendations to improve the education about mandatory reporting has led many medical professional organisations to provide detailed information to their members to enhance their understanding of the mandatory notification legislation. The Medical Board of Australia refined its guidance for medical practitioners in their guideline for notifications in 2014.⁸ This guide provides a detailed explanation with flow charts to assist doctors to interpret the legislation, stepping through the decision-making process and clearly articulating that the threshold for reporting remains high. Despite this, doctors continue to call us, fearful of the mandatory notification process. Often it is a family member inquiring on their behalf. Many doctors have indicated that they were not concerned about the mandatory reporting issues until they became unwell themselves. The reality of the concern is often only realised by a doctor when that doctor's health fails.
5. The wording of the WA amendment is simple. It provides reassurance to doctors and other health practitioners that they can access confidential health care. Hansard records that this amendment was introduced on the floor of parliament (by the people) recognising the importance of protecting the public by enabling health practitioners to seek health care.⁶ The amendment adds an extra category of exemption in s 141(4):
 - (da) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student;

This amendment is clear, concise and its intent is readily understood by the health practitioner, while addressing the legislative purpose. Importantly, this legislative change still ensures that doctors and other health practitioners have a professional obligation to report a health practitioner when there are concerns related to their practice due to boundary violation, impairment, substance abuse or unprofessional behaviour. The legislation does not remove this obligation; even though it is not mandated, the obligation remains. This approach enhances community safety by increasing the health access of doctors while ensuring that those who pose a risk are still reported. Mandatory notifications continue to be made in Western Australia, despite the exemption. Similarly, the treating practitioners still report their patients in Western Australia, even though they are not mandated to do so.⁹ Doctors are trained to understand their professional reporting obligations and with the introduction of the National Law, doctors are more aware of their professional obligations and the pathways for reporting. This current evidence (from the Australian Health Practitioner Regulation Agency⁹) demonstrates that the exemption is effective in protecting the public.

6. The new legislation is very complex, and difficult to apply to the clinical context. This lack of clarity fails to provide reassurance for doctors who wish to seek care. The current phrasing and changes to the tense of the verbs may appear to address some of the concerns related to mandatory reporting from a theoretical, legal perspective, but it is not reasonable to assume that this readily translates to reassurance for the health practitioner. The explanatory notes add to this complexity. The explanatory notes advise that the legislation be interpreted in a 'holistic' manner. The very need to introduce this concept highlights the lack of clarity offered within the legislation. It also signals the significant difficulty that the treating doctors will have when attempting to apply the legislation to the clinical space when caring for another health practitioner. The decision to introduce such complex legislation, rather than adopting the evidence-based Western Australian amendment, simply fails to address the barriers to health access for the health practitioner who is unwell.

In summary, there is no doubt that the current mandatory reporting obligations for registered health practitioners under the *Health Practitioner Regulation National Law (National Law)* have created significant barriers for doctors accessing health care. This complexity is exacerbated by the different legislative requirements which apply across different jurisdictions. It is important that these two issues be effectively addressed. QDHP believes that following the Western Australian provisions offers an effective and immediate solution.

QDHP is uniquely placed to be able to provide the necessary insights into the current situation regarding health access issues experienced by doctors. While other health practitioners see doctors after they navigate the barriers to health access, we speak to doctors who are struggling against the mandatory reporting barriers. QDHP has to deal with the families of those practitioners who lose this battle. The public is not served in either case; when a doctor fails to conquer the barriers to care nor when the community loses a doctor to suicide.

The proposed amendments to the legislation fail to provide national consistency and QDHP considers that the proposed amendments will fail to improve the health access for doctors seeking care. This failure will impact upon the health of the health practitioners in Queensland, and very importantly, this failure will impact upon the health of the members of the Queensland community.

We humbly provide this submission with the hope the amendments to section 140 are reconsidered and that the WA amendment to section 141 is adopted. This is the only evidence-based solution and its introduction has been supported by the experts in this area. The WA exemption to mandatory reporting will provide Australian health practitioners with the assurance of health access while ensuring better protection for our community.

Yours faithfully,



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