

Health, Communities, Disability Services and Domestic and Family Violence Prevention  
Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
Via email: [health@parliament.qld.gov.au](mailto:health@parliament.qld.gov.au)

26 November 2018

Dear Committee Secretary,

**Re: Health Practitioner Regulation National Law and Other Legislation Amendment  
Bill 2018**

Thank you for the invitation to comment on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018* (“the Bill”). We write to comment specifically on the Bill’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”.

**INTRODUCTION**

The authors of this submission are all doctors-in-training (otherwise called junior doctors).

We understand the immense difficulties in striking a balance between upholding public confidence in the safety of our medical practitioners with the desire to provide a regulatory framework which is both engaging and not overly burdensome to its participants. However, the system we have in place currently favours the former grossly disproportionately to the latter, and doctors as a consequence remain fearful and disengaged.

We consider the reforms proposed in this Bill as they relate to mandatory reporting to be a step in the right direction; however they are nowhere near appropriate to provide sufficient reassurance to doctors at risk. The Bill in its current state, in our opinion, must be redrafted with stronger protections for health practitioners.

**THE MENTAL HEALTH OF DOCTORS**

We, the authors, are doctors-in-training, and within our ranks you can find some of the most vulnerable doctors. It is common for us to have our competence continuously questioned by ourselves and by others, be overworked, be bullied or harassed, or be subject to the immense stresses of specialist medical college applications, examinations and progression

requirements. We hope that our perspective may provide some insight into a most vulnerable segment of the medical workforce.

On a personal note, we have already had contemporaries from our medical schools die by suicide and know of many other doctors who came close.<sup>1</sup> Most doctors know a doctor who has died by suicide. Every doctor knows a doctor or medical student who has been personally affected, directly or indirectly by depression and suicidality in the medical profession. It is a heartbreakingly common experience. We seek as a matter of dire urgency to develop safeguards and break down barriers to seeking help, noting that our peers practising anywhere except Western Australia cite “mandatory reporting” as a significant barrier to seeking help for their mental health.

Our anecdotal experience is supported by Beyond Blue’s landmark study of doctors and medical students in 2013, which showed more than one in two doctor respondents (52.5 percent) cited a fear of lack of confidentiality/privacy as a barrier to seeking help for depression or anxiety. Fear of impact on registration and right to practice was specifically cited by 34.3 percent of doctor respondents.<sup>2</sup>

It is important to understand that the modern experience for doctors-in-training is one of intense competition for jobs, and that job applications usually require a disclosure of whether a report about you has *ever* been made to the Medical Board. As a mandatory report is therefore likely to be disadvantageous for the remainder of one’s career, doctors tend to act very cautiously when contemplating help-seeking to avoid what they perceive as an enormous risk. In so doing, they are liable to present much later, or not at all, for assistance with their mental health.

Such behaviour is the antithesis of what we would recommend to our own patients. As doctors, we know this, but such is the fear of career ramifications that many continue to practise without seeking help. Absent “mandatory reporting”, doctors would seek help sooner, which would benefit them, their families, and their patients.

## THE CURRENT BILL, OPINIONS, AND ALTERNATIVES

For reforms to be effective, it is vital that they convincingly address doctors’ strongly-held concerns. Whilst changing the law is the most vital aspect of this, the revised law must be clear and reassuring. The proposed new, higher thresholds for reporting in this Bill – which

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<sup>1</sup> Professor Steve Robson, President of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, recently wrote publicly about his experience of depression and suicidal ideation as an intern:  
<https://www.smh.com.au/national/i-was-a-young-doctor-about-to-kill-myself-when-i-heard-a-knock-at-my-door-20181101-p50d7s.html> Please also see the response by his then colleague, Dr Kate Tree:  
<https://www.smh.com.au/national/dear-steve-i-was-among-the-young-doctors-who-decided-to-knock-on-your-door-20181031-p50d7s.html>

<sup>2</sup> Beyond Blue, National Mental Health Survey of Doctors and Medical Students, October 2013, Table 42,  
[https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report---nmhdmss-full-report\\_web](https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report---nmhdmss-full-report_web)

we concede offer some improvement over the current threshold – are nonetheless convoluted and open to broad interpretation.

The creation of doubt and uncertainty in the existing legislation (except for Western Australia) has severely undermined the success of our current framework, and the proposed reforms do not remove such doubt. It must be remembered that the doctors at greatest risk are those suffering mental illness – symptoms of which often include exaggerated self-doubt and feelings of hopelessness. In order not to perturb doctors from seeking help for fear of being reported, the law must be perfectly clear both to them *and* to their potential treating doctor. If they fear that the law is ambiguous and thus incentivises defensive behaviour by treating doctors (i.e. over-reporting), then it will have failed to protect either the doctor at risk or the patients they continue to treat.

Given such ambiguity remains in the current Bill, we believe it will fail in its goal to promote help-seeking among doctors. Furthermore, we worry that politicians will dismiss ongoing concerns about mandatory reporting: labouring under the mistaken belief that the problem has been fixed.

Exploring more specific provisions of the Bill, whilst it changes the tense from one of historical risk to one of prospective risk, which is in theory a positive change, the language is still too confusing to be of adequate reassurance to doctors. In contrast, the provisions in Western Australia's legislation are clear. They state in no uncertain terms that there is an exemption from making a mandatory report if "the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student".<sup>3</sup> Ethical obligations are unaffected by this exemption and continue to cover situations where a report should still be made regardless of the lack of a legal compulsion to do so.

We argue that the best outcome for doctors' mental health and, by extension, their capacity to care for their patients, would be to adopt the same wording as in Western Australia, or else wording that is extremely similar. Adoption of the same wording would also have the significant additional benefit of achieving national harmonisation of the law, which was an original intent both of the so-called "National Law" but also of the COAG Health Council process that led to this Bill's drafting. Finally, it would also provide doctors with the same rights as our patients – that is, to confidentiality in our relationship with our own treating practitioners.

We note that the Australian Medical Association has expressed similar concerns after careful consideration of the Bill.<sup>4</sup>

We also note that Recommendation 10 of Kim Snowball's *Independent Review of the National Registration and Accreditation Scheme for health professionals* accords with our

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<sup>3</sup> Health Practitioner Regulation National Law (WA) Act 2010 – Schedule, s 141(4)(ca), [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol\\_act/hprnla2010450/sch1.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_act/hprnla2010450/sch1.html)

<sup>4</sup> AMA, Queensland Parliament must improve mandatory reporting laws, 9 November 2018, <https://ama.com.au/media/queensland-parliament-must-improve-mandatory-reporting-laws>

submission, viz. "The National Law to be amended to reflect the same mandatory notification exemptions for treating practitioners established in the Western Australian law."<sup>5</sup>

Finally, we ask that the Committee please consider the thoughtful and comprehensive 2014 article on this topic by Goiran, Kay, Nash and Haysom in the *Journal of Law and Medicine*.<sup>6</sup>

## CONCLUSION

We thank the Queensland Government and COAG Health Council for their work in this area. We feel very strongly about the critical importance of getting this Bill exactly right, both in seeking to improve doctors' mental health and in ensuring the safety of our patients. We have already lost too many colleagues to suicide and are determined to help effect the change that is most likely to prevent more needless tragedy.

To summarise our views would be to say that:

- It is in the public interest to have a less draconian scheme that we feel comfortable engaging with, rather than a more draconian scheme which we all fear to approach; and
- We as doctors want to be safe, and it is the public interest to make it as easy as possible for us to get help.

We thank you for your consideration.

Yours sincerely,



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<sup>5</sup> Australian Health Ministers' Advisory Council, Independent Review of the National Registration and Accreditation Scheme for health professionals, December 2014, <http://www.coaghealthcouncil.gov.au/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=0&moduleid=514&articleid=68&documentid=74>

<sup>6</sup> Goiran N, Kay M, Nash L, Haysom G, Mandatory reporting of health professionals: the case for a Western Australian style exemption for all Australian practitioners, *Journal of Law and Medicine*, 2014;22(1):209-220, <http://www.abc.net.au/cm/lb/6118382/data/journal-of-law-and-ethics-article-data.pdf>



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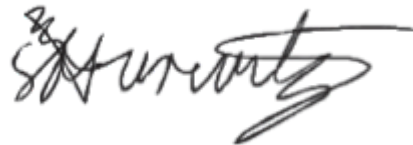
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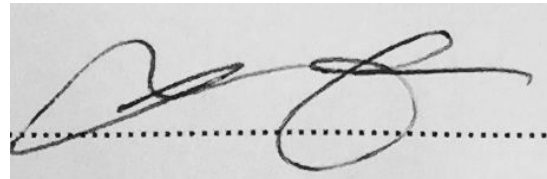
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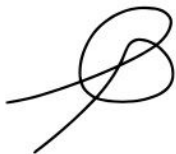
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