



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

26 November 2018

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018

Introduction

The Royal Australian College of General Practitioners (RACGP) thanks the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for the opportunity to comment on the proposals made in the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018* (the Bill), which seeks to amend the *Health Practitioner Regulation National Law* (National Law).

The RACGP is Australia's largest general practice organisation, representing over 39,000 members working in or toward a career in general practice. The RACGP advocates for affordable, equitable and safe access to high quality health services, which facilitate the best possible health outcomes for all Australians. These services must be accessible for all Australians, including practitioners seeking treatment (practitioner-patients).

This submission outlines the RACGP's response to the Bill regarding reforms to mandatory reporting by treating practitioners.

It is the RACGP's view that a treating practitioner should not be mandated to report the medical condition or other impairment of a registered health practitioner under their care. There should be no distinction between the treatment of a registered health practitioner and that of a patient from any other occupation. Just like all other people living in Australia, any practitioner-patient should be entitled to discuss their health with their doctor in a strictly confidential environment.

RACGP position on mandatory reporting by treating practitioners

The current mandatory reporting arrangements are of serious concern to the RACGP and its members, and have been since the inception of the National Law in 2009. The amendments outlined in this Bill make no material difference to the current arrangements which are, as previously stated, unsatisfactory.

The RACGP accepts that mandatory reporting, as applicable to employees, colleagues, and managers, has an important role in protecting public safety.

However, treating practitioner mandatory reporting of medical conditions and impairments remains a barrier for practitioner-patients requiring care/treatment, as they fear the consequences of being reported by their treating doctor. This barrier can have a negative effect on the wellbeing of our health workforce, and in turn patient safety.

The only issue that a treating practitioner should be subject to on mandatory reporting is where there is evidence of sexual misconduct.

It is important that practitioner health is protected. Barriers to treatment, whether real or perceived, must be removed. A shared understanding between policy makers and practitioners of the *intent* of any amendments to the National Law is vital, so that practitioners feel confident about their rights and responsibilities. All practitioners will require education and further information to enable them to understand the mandatory reporting requirements that apply in their jurisdiction. Any ongoing lack of clarity in this important matter is unacceptable to the RACGP.

Council of Australian Governments (COAG) Health Council (CHC) consultation

The amendments put forward in the Bill remain unchanged from those put forward to the medical profession during targeted consultation in August 2018. The RACGP is deeply dissatisfied that CHC has dismissed the feedback from the medical profession. The CHC has made no effort to incorporate even relatively minor suggested changes, such as those that recommended clarifying the policy intent of the amendments.

Complete dismissal of the advice provided by the medical profession has resulted in the amendments failing to meet their stated purpose of ensuring that health practitioners have confidence to seek treatment for health conditions. Rather than clarifying the matter, these amendments further complicate the assessment of risk by applying it to medical impairments, but not drug and alcohol or deviation from professional standards issues. This convoluted framework will only cause more confusion and stress for practitioners who are already under strain.

The negative impact of mandatory reporting laws on doctors' wellbeing is an extremely important issue among the medical profession. Many medical professionals, either individually or collectively, have been advocating for change to the laws for almost a decade. These doctors have experienced firsthand the impact that the harsh laws have had on the medical community. The tokenistic style of consultation has resulted in the profession being unable to contribute to the conversation and, as a result, the amendments put forward instead reflect the views of administrative departmental policy writers who have little or no understanding of the pressures of working in medicine.

For reference, the key amendments to the CHC proposal suggested by the RACGP are outlined in Appendix 1.

Patient safety and practitioner wellbeing is at risk

The interests of patient safety and practitioner wellbeing are complementary, rather than competing or mutually exclusive. Removing barriers that prevent registered health practitioners seeking healthcare will improve rather than reduce patient safety. If practitioners are practising with hidden health concerns, patient safety is at risk. It is important that practitioners receive the healthcare they need, rather than seek to hide issues through fear of being reported by their treating practitioner.

In a recent poll conducted by the Medical Journal of Australia, 59% of respondents (n = 2,606) indicated that they either disagreed or strongly disagreed that doctors can disclose their mental illness to their treating practitioners without fear for their career.¹

Health professionals spend their lives supporting the health and wellbeing of all Australians, but this legislation puts the health and wellbeing of health professionals at risk. Registered health practitioners should be entitled to receive the same level and quality of confidential care from their treating practitioners as all Australian patients and communities. The ability to confidently discuss all aspects of your health with your GP, without fear of repercussions, should not alter according to qualification, occupation, wealth, age, status or any other factor.

Beyondblue's 2013 survey of more than 12,000 doctors found that one in three were concerned that seeking treatment could have an adverse effect on their registration and right to practise. Additionally, one in two respondents raised lack of confidentiality as a barrier to seeking help. This survey also found that "doctors reported substantially higher rates of psychological distress and attempted suicide compared to both the Australian population and other Australian professionals."²

Doctors are patients too, they deserve to be supported, not reported. Their wellbeing needs to be protected so that they can continue to provide the best possible level of care to the community.

Evidence of successful reporting exemption in Western Australia

The RACGP has long supported exempting health practitioners from reporting doctors under their care, in line with the model adopted by Western Australia (WA).

The Health Practitioner Regulation National Law (WA) Act 2010 exempts doctors in Western Australia from reporting practitioners who are under their professional care. Under this model, practitioners are able to seek help when needed without fear of repercussions.

This is a known and tested model, which the RACGP and many other medical bodies^{3 4 5} consider appropriate to protect both patients and practitioners. The model has also been supported by the Victorian Legislative Council's Committee on Legal and Social Issues,⁶ and by a Senate Inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA).⁷

Adopting a model similar to that in WA would not increase risk to the public, as mandatory reporting of employees, employers, and colleagues remains in place. If the CHC has evidence which contradicts this, it should be provided to stakeholders immediately. The rates of reports regarding practitioner medical conditions or impairments in WA are within the range of the number of notifications in other states and territories.⁸

Adoption of the WA model would lead to a nationally consistent approach to practitioner-patients, which would be fairer to practitioners around Australia. It would reduce real and perceived barriers to treatment, so that all health practitioners can obtain the treatment they need without fear of being reported.⁹

Appendix 1

RACGP Recommendations to COAG Health Council (CHC) Consultation on Proposed reforms for mandatory reporting by treating practitioners, Health Practitioner Regulation National Law Amendment (Stage 1A, August 2018)

The RACGP's preferred option is complete exemption for health practitioners from reporting doctors under their care, in line with the model adopted by Western Australia. Rewording the current legislation does not go far enough to ease the burden on our health professionals.

Notwithstanding the above position, the below recommendations on the proposed changes were provided to the CHC in August 2018.

Changing from 'risk of substantial harm' to 'substantial risk of harm'

The proposed wording change simply shifts the focus from harm to risk. A semantic amendment is not enough to alleviate concerns or clear up confusion for practitioners. The RACGP suggests the wording be further amended to 'Considerable risk of substantial harm'.

Increasing reporting requirements for sexual misconduct

The proposed amendments to the National Law require a treating practitioner to report if they believe a practitioner-patient is at risk of engaging in sexual misconduct. Mandatory reporting of sexual misconduct should only be required when the practitioner-patient has in fact engaged in inappropriate behaviour, rather than 'at risk' of engaging in the behaviour.

If the amendments are to be implemented, the RACGP recommends that at a minimum, wording be amended to 'considerable/substantial risk' to be consistent with the rest of the legislation, prevent over-reporting and ensure another barrier to care is not created.

Introduction of a framework for assessing practitioner-patient risk

If a framework is introduced to support treating practitioners in assessing practitioner-patient risk, the RACGP recommends the following amendments:

- adding to the list of factors a statement regarding practitioner-patient insight into their condition
- for consistency, simplicity and ease of reporting, the list of factors should be applied consistently across intoxication, impairment, and departure from professional standards. The approach taken to assess risk would be substantially similar for these issues, recognising that departure from professional standards is often the result of an underlying impairment, and therefore the framework for assessing risk of impairment would be applicable.

References

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- ¹ Medical Journal of Australia 2018, *We can prevent doctor suicide*, www.doctorportal.com.au/mjainsight/2018/44/we-can-prevent-doctor-suicide/
- ² Beyondblue 2013, *National Mental Health Survey of Doctors and Medical Students* www.beyondblue.org.au/docs/default-source/defaultdocument-library/bl1132-report---nmhdmss-fullreport_web
- ³ AMA Mandatory Reporting Submission 2018 <https://ama.com.au/submission/ama-mandatory-reporting-submission-2018>
- ⁴ Australian Nursing and Midwifery Federation Submission to Discussion Paper: Mandatory reporting under the Health Practitioner Regulation National Law, 2 October 2017 http://anmf.org.au/documents/submissions/ANMF_Submission_Discussion_Paper_Mandatory_Reporting_Vic_Branch_Final.pdf
- ⁵ Australian Medical Student Association, Medical Student Registration and Mandatory Reporting Policy Document, reviewed 2018 www.amsa.org.au/sites/amsa.org.au/files/Medical%20Student%20Registration%20and%20Mandatory%20Reporting%20%282018%29_0.pdf
- ⁶ Legal and Social Issues Legislation Committee. *Inquiry into the performance of the Australian Health Practitioner Regulation Agency*, Report No. 2. Parliament of Victoria, 2014.
- ⁷ Community Affairs Legislation Committee. *National registration and accreditation scheme for doctors and other health workers*. The Senate, 2009.
- ⁸ *Australian Health Practitioner Regulation Agency Annual Report 2016/17* www.ahpra.gov.au/annualreport/2017/downloads.html
- ⁹ 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): 188-209.