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Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018

Thank you for the invitation to provide a submission to the Committee's inquiry into the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018*.

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 78,000 healthcare practitioners and students around Australia.

General Comments

We are disappointed that when considering the issue of mandatory reporting earlier this year, Health Ministers did not adopt the treating practitioner exemption from mandatory reporting that currently exists in Western Australia. This would have been the simplest and best way to remove barriers to doctors seeking help when they need it, while also protecting the public.

There is no evidence that the treating practitioner exemption in Western Australia has led to a reduction in public safety. Mandatory notifications have increased in Western Australia. We continue to hear of health practitioners travelling to Western Australia from interstate, so that they can obtain treatment safe in the knowledge that their treating practitioner does not have an obligation to report them.

There is still significant stigma attached to talking about seeking treatment for mental health issues, as evidenced by the [article recently published in MJA Insight](#) by Professor Steve Robson and the comments in response.

The Committee has the opportunity to effect real change if the Committee were to recommend to the Parliament that Health Ministers reconsider their decision not to adopt the Western Australian model.

We appreciate that this would require further time, however, adopting the Western Australia exemption has the potential to change the lives of Australian health practitioners and provide better protection for patients.



Comments on the Bill

We make the following comments on the Bill currently before the Committee.

We support the amendments to section 140 of the National Law changing the tense of the definition of notifiable conduct from the past to the present tense. This is a change Avant has consistently advocated for¹.

If this Bill is proceeded with, we hope that the following amendments to section 141 of the National Law will be reassuring to practitioners:

- A higher threshold for reporting the three types of notifiable conduct (impairment, intoxication and departure from standards).
- Recognition of the interrelationship that can occur between the three types of notifiable conduct, and allowing the treating practitioner to assess the risk to the public holistically.
- Allowing the treating practitioner to consider various factors relating to impairment (“impairment factors”) when assessing risk:
 - The nature, extent and severity of the impairment.
 - The steps the practitioner-patient is taking or willing to take to manage the impairment.
 - The extent to which the impairment can be managed with appropriate treatment.

Recommended changes

While we are hopeful that the amendments will help to overcome the profession’s concerns about the current mandatory reporting regime, we are concerned about how treating practitioners might apply these provisions in practice. The proposed changes are complicated and may be confusing to apply. If practitioners do not understand the provisions or how to apply them there will be more confusion, and no change to practitioners’ perceptions about seeking the treatment that they need:

- Practitioners may not appreciate the nuances of “substantial risk of harm” (new provision) versus “risk of substantial harm” (current provision).
- “substantial risk of harm” still requires a treating practitioner to report a high likelihood of minimal harm which is arguably not consistent with a higher threshold. Although the wording is clunky, “substantial risk of substantial harm” would, in our view, better reflect the higher threshold.
- We believe that it will be clearer for treating practitioners if the impairment factors applied to the three types of notifiable conduct in the decision tree because it will allow for a more holistic assessment of the risk and avoid the confusion of having a different approach to treatment of drug and alcohol issues.

We ask that consideration be given to providing an exemption from mandatory reporting obligations generally to health practitioners engaged by doctors’ health advisory services, in a similar way that there are exemptions currently for health practitioners who are also legal practitioners, or engaged by professional indemnity insurers, or are members of quality

¹ See Avant position paper *Mandatory Reporting* June 2015 <https://www.avant.org.au/mandatory-reporting/>



assurance committees (as outlined in the current legislation in section 141(4) and proposed section 141C).

Doctors' health advisory services provide an important service to doctors by way of advisory and referral services but many practitioners engaged by doctors' health advisory services (depending on the model used and services offered) do not consider themselves to be in a treatment relationship with the doctors who call them. Contact with a doctors' health advisory service is often an important first step to an impaired doctor seeking treatment, yet practitioners can be reluctant to make contact due to the fear of being reported. Providing an exemption to practitioners engaged by doctors' health advisory services would remove another barrier to practitioners seeking appropriate treatment.

If the legislation is passed, education of practitioners will be critical to the success of the new provisions. It is vital to avoid the confusion that has plagued mandatory reporting provisions since 2010 when the National Law commenced, so that practitioners can feel safe in seeking treatment. This will be better for them, better for their patients and better for the healthcare system.

Please contact me on the details below if you require any further information or clarification of the matters raised in this submission.

Yours sincerely

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