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Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (HCDSDFVPC)
Parliament House
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**RE: Health Practitioner National Law and Other Legislation Amendment Bill 2018 Submission**

The Australian Medical Students' Association (AMSA) welcomes the opportunity to provide a submission to this second round of consultation for amendments to mandatory reporting requirements by treating practitioners, in the proposed 'Health Practitioner National Law and Other Legislation Amendment Bill 2018'.

AMSA is the peak representative body for Australia's 17,000 medical students. AMSA is a consistent advocate for improving the mental health and wellbeing of medical students and medical professionals. AMSA will take this opportunity to highlight the implications of this reform on medical students specifically.

In remembering the series of tragic deaths that prompted this discussion, the urgency of such reform cannot be understated. AMSA appreciates COAG's attention to reform of the National Law, in particular the focus on treating doctor exemptions. It is imperative that law reform is enacted to protect medical students and doctors and ensure they can access preventative, sometimes lifesaving, care without fear.

AMSA has identified several issues with the proposed reform as outlined in our previously submitted consultation paper. The consultation process, by failing to heed the suggestions of AMSA and other leading medical bodies has ignored very real concerns about the effectiveness of this reform. AMSA maintains that this legislation, falling short of exempt treating doctors from mandatory reporting requirements, will not achieve its purported goals. We know that despite the current higher threshold for reporting applied to students, a perception of risk in disclosing mental health to a GP remains prevalent amongst students, and anecdotally is a considerable deterrent for seeking help. We are unable to support reform which proposes simply raising thresholds, makes the legislation more complicated, and maintains reporting by treating-practitioners as the solution.

The Explanatory Notes assert that the draft legislation will "ensure health practitioners have confidence to seek treatment for health conditions". AMSA does not believe this will be the case.

Despite the time that has elapsed between the high profile tragedies that prompted this discussion, the imperative for effective reform must not be forgotten. Bravery must be shown in undertaking comprehensive reform to return an adequate balance to our regulatory system. Unintended consequences of the National Law have now been recognised, and must be redressed. We must ensure that our carers are equally able to access the care they need.

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**Summary of Response**

1. The proposed legislation does not achieve the goal of ensuring health practitioners or medical students can seek help when needed.
2. The proposed legislation does not give appropriate guidance to treating practitioners in assessing impairment, and will not be adequate to reassure doctors that they may seek help for mental health concerns without concern for their professional safety.

**Our recommendations:**

1. A nationally consistent approach to mandatory reporting should be adopted.
2. Treating doctors should be exempt from Mandatory Reporting requirements for disclosures of impairment, intoxication and departures from professional standards.
3. Education providers should be included in the exemption for treating doctors to mandatory reporting requirements for disclosures of impairment, intoxication and departures from professional standards.

1. **The proposed legislation does not reflect the key principle agreed by Health Ministers that the National Law must ensure health practitioners can seek help when needed and protect the public from harm**

### 1.1 Ongoing confusion, uncertainty and deterrence

There are two essential problems of the existing legislation. Firstly, the existence of a mandatory reporting mechanism for treating practitioners, and secondly, the consequent perception by patient-practitioners of mandatory reporting being applied in excess of its intended scope. Unfortunately, the proposed legislative change will not achieve the key principle of allowing doctors to seek help when needed, or address the confusion and misperceptions about mandatory reporting.

The original proposal for reform reflected the Western Australian model of exemptions for treating practitioners to mandatory reporting requirements. This model, as has been in use for over a decade in Western Australia, has not demonstrated an increased risk to the public. The 2014 Independent Review of the National Registration and Accreditation Scheme for health professions recommended the adoption of this model nationwide, on assessing the evidence, including evidence of patient safety.

The proposed reform, in attempting to merely raise the threshold for reporting for treating doctors, and not exempt them entirely, will not address the perception amongst doctors and medical students that disclosing a mental health condition to their general practitioner involves risk to their registration. *BeyondBlue* reported that the greatest barrier for medical professionals in disclosing mental health concerns was a fear of 'risk to registration' [1]. This is demonstrated by the current status-quo in which a higher reporting threshold for students already exists, yet students still report fear of mandatory reporting repercussions and poor help-seeking behaviour.

Students are currently taught about the existence of mandatory reporting, and that the threshold for reporting of students is higher than for doctors. However, AMSA can report that the average student is not confident of the details of student-specific provisions to mandatory reporting policy, and how they apply in practice. This demonstrates that comprehensive education on its own about mandatory reporting is not sufficient to reduce barriers to help-seeking.

It should be remembered that with the original introduction of mandatory reporting, calls to doctors health services decreased by up to 50% [2].

The only effective mechanism for ensuring medical practitioners and students to seek help when needed is to exempt treating practitioners from mandatory reporting requirements in regards to impairment, drug and alcohol use, and departures from professional standards. Where the law deters help-seeking behaviour, risks to the public are only heightened by delay of appropriate early treatment.

The reform also fails to approach national consistency in Mandatory Reporting requirements, which would be achieved by adopting the WA-model consistently across the states and territories.

### 1.2 Including educators as 'treating practitioners'

AMSA was disappointed that no consideration was given to the issue of university faculty and teaching staff, especially considering the original higher threshold for reporting students has been lost in the new legislation.

Currently education providers as well as medical practitioners are mandated to report medical students who demonstrate impairment that may place the public at substantial risk of harm (with the exception of WA). The proposed legislative change does not include education providers under the amendment to s141 or the addition of ss141A-C. AMSA believes that medical professionals in concurrent roles as education providers have a duty of care to students and are providers of pastoral and supportive care, and so, they should be exempted from the mandatory reporting requirements, alongside treating doctors.

We know that poor mental health amongst medical students foreshadows the poor mental health of doctors. It been consistently demonstrated to be worse than that of the general population, with levels of psychological distress of final year medical students even greater than those of newly graduated doctors [1]. Anecdotal evidence collected by AMSA shows that medical students hesitate to disclose mental health concerns to their education providers for fear of being reported and the ramifications on their academic progression and future career prospects.

The mandatory reporting requirements placed on universities puts them in the difficult position of simultaneously having a duty of care to support students and being legally required to report students who disclose. This creates a paradoxical situation where faculty may discourage students from approaching them about their mental health in order to protect them from reporting requirements. Multiple students have reported that they had been advised by members of faculty to not seek support and counselling services or disclose mental health conditions to other faculty members because they would be reported to AHPRA, despite having sought appropriate management for their condition.

If a student feels unable to approach staff for help with a mental health condition, access to effective, appropriate support provided by the university is limited. The impact of this extends beyond healthcare to educational processes, including special consideration for assessment and academic support.

Significantly, this inclusion of 'education providers' as treating practitioners would not remove safeguards to patient protection. Due to the inclusion of both education around and assessment of professional standards in medical school curricula, mechanisms to identify and address at risk students already exist at a university level [3]. Voluntary notifications would still also be able to be made.

It must be highlighted that behaviours cultivated during medical school will follow these students into their medical career. Addressing cultural factors relating to stigma and poor help-seeking amongst medical professionals will be more difficult if young doctors have been pre-conditioned to fear disclosing mental health concerns during medical school. This is an inevitable consequence of placing the burden of mandatory reporting of students onto their education providers. Exemption of medical educators from mandatory reporting is pivotal to fostering a help-seeking culture for students from the beginning of their medical careers.

**2. The proposed legislation does not give appropriate guidance to treating practitioners in assessing impairment, and will not be adequate to reassure doctors that they may seek help for mental health concerns without concern for their professional safety.**

**2.1 Added burden on treating practitioners of a 'holistic risk assessment' and increased uncertainty and variability in interpretation by practitioners**

The proposed legislation is seeking to dispel misperceptions and confusion around the National Law by introducing another layer of complexity to the legislation. One of the main issues with mandatory reporting was a perception of variability in enforcement which lay at the hands of the treating doctor. Whilst intended to provide more leeway, the proposed reform with the addition of the 'holistic assessment' is insufficient, compared to the alternative of removing mandatory reporting for impairment. It adds additional layers of discretion for the general practitioner, and thus further confusion about how these laws may be interpreted in practice.

It is particularly insufficient for junior doctors and medical students, who are often required to relocate semi-regularly for training, thus impeding their ability to develop long-standing therapeutic relationships with a regular GP. Research has demonstrated that very few practitioner reports are made in the context of an established treatment relationship. During the year 2016, only 8% of mandatory reports made to National Boards through AHPRA were lodged by health practitioners who had a treating relationship with the subject [4].

The current status quo and the proposed reform unfairly impact on these populations groups, who are also often at high risk for poor mental health. With each move a doctor must seek out a new GP, whom they can get to know only briefly. This makes it more difficult to assess and trust the discretion of a GP regarding how they will interpret the new legislation, and how they will weigh up a need to report, and the level of risk aversiveness they may apply. It is easy to conclude that a treating doctor would prefer to conservatively assess risk due to the implications under the Act for their own professional safety, rather than to underestimate risk in order to protect the doctor-patient who is disclosing to them.

Furthermore, fear surrounding the variability of this holistic assessment may encourage doctors to only disclose partially and fail to report the extent of their symptoms and extent of improvement whilst on a treatment program, and thus receive inadequate or inappropriate management.

### 2.2 Proposed amendment of threshold to "substantial risk of substantial harm"

The draft legislation proposes raising the threshold for risk by changing the wording from "risk of substantial harm" to "substantial risk of harm". AMSA believes the proposed wording implies that the threshold of reportable harm is actually lowered, encompassing an entire spectrum of possible harms, in contrast to the previously worded "substantial harm".

AMSA supports raising the threshold of "risk", to "substantial risk". As such AMSA proposes that 141B heading and subsection 1, 4 and 5 should be amended to a threshold of placing the public at a "substantial risk of substantial harm".

### 2.3 Failure to define impairment in regards to mental health conditions

The principal concern amongst medical professionals around mandatory reporting laws has focused on the interpretation of 'impairment' in relation to mental health. Although, as a society we have come a long way in reducing stigma associated with mental health, fear and misconceptions persist. High rates of depression, anxiety and suicide, and low rates of help seeking in the medical community has demonstrated that health practitioners are not immune to the ongoing presence of stigma around these disorders. As such, it is important to assume that the regular 'treating practitioner' may be uncertain as to the extent to which having a mental illness as a doctor confers a substantial risk of substantial harm to the public. We can assume that individual GPs will calculate this risk differently based on their own clinical experience of treating mental illness. This is supported by the current implementation of mandatory reporting, where of the mandatory notifications AHPRA received in 2016/2017, over 50% did not result in regulatory action being taken against a health practitioner, indicating a poor understanding of what constitutes risk of harm [5].

The risk of mental illness is first and foremost to the patient who is suffering, and mandatory reporting requirements do the most harm to both health practitioners and the public by deterring help-seeking and excluding health practitioners from access to primary prevention, early intervention and secondary prevention. This would be mitigated by exempting treating doctors from mandatory reporting requirements.

Furthermore, the draft legislation lists factors that a treating practitioner may consider in assessing an impairment. However in stating the doctor may consider the 'severity' of an impairment, it does not clearly state that only 'severe impairments' should be reported. Examples where this would not be sufficient to guide appropriate risk assessment include a patient presenting with an anxiety disorder, mild-moderate depression, panic attacks or with suicidal ideation, where a mental health diagnosis alone does not immediately confer a substantial risk of substantial harm to the public, and should not be reflexly reported.

**Conclusion**

The intention of the legislative reform is to increase the likelihood that doctors will seek help for mental illness early and access preventative care in a way that minimises harm to themselves, and ultimately maximises their ability to function safely at work. This will only be achieved if health practitioners and students can trust in the preservation of patient-doctor confidentiality.

We have identified several reasons why the proposed reform will not achieve this. AMSA believes to allow medical professionals and students to seek help when needed treating doctors must be exempted from mandatory reporting requirements.

AMSA thanks the Committee for the opportunity to provide comment on this important issue, and looks forward to the implementation of nationally consistent reforms in the near future.

Sincerely,

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