



PRESIDENT

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BMBS, FANZCA, FAICD*Advancing anaesthesia,
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Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
George Street
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Dear committee members

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide feedback on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018*.

The Australian and New Zealand College of Anaesthetists (ANZCA), including the Faculty of Pain Medicine (FPM), is committed to high standards of clinical practice in the fields of anaesthesia, perioperative medicine and pain medicine. As the education and training body responsible for the postgraduate training programs of anaesthesia and pain medicine for Australia, New Zealand and parts of Asia, ANZCA is committed to ongoing continuous improvement, promoting best practice, and contributing to a high quality health system.

The medical specialty of anaesthesia is critical to the provision of safe, effective anaesthesia and perioperative care for patients. ANZCA is involved in anaesthesia mortality reviews, collecting patient outcome data, publishing information relevant to the safe practice of anaesthesia, and preparing evidence based guidelines.

Patient safety is of the highest priority for ANZCA and it is from this perspective that the college views the issue of mandatory reporting for treating health practitioners. Naturally however, mandatory reporting also raises issues around barriers to the health and wellbeing of practitioners which must also be considered. It is recognised that clinical practitioners often present for care in crisis. This delayed presentation can lead to stress-induced decompensation, potential harm to patients, and tragically, suicide – in part related to a reluctance to seek professional support. Any barriers to care, perceived or otherwise, should be minimised in this context.

ANZCA provided feedback in September 2017 to the Australian Health Ministers' Advisory Council discussion paper *Mandatory reporting under the Health Practitioner Regulation National Law* in which the tenets underpinning the college's approach to a mandatory reporting framework were outlined. Some of these, such as placing the emphasis on current and future risk rather than past behaviour, have been addressed in the proposed bill. Others however, are

not adequately addressed by the proposed amendments. ANZCA's feedback on the relevant sections of the draft bill are detailed below.

Feedback on draft amendments

1. 141A Mandatory notifications by treating practitioners of sexual misconduct

ANZCA notes and supports the changes to this section that extends the existing obligation to make a mandatory report about sexual misconduct to include future risk.

2. 141B Mandatory notifications by treating practitioners of substantial risk of harm to public

ANZCA notes the changes to this section and makes the following comments.

2.1 Defining a practitioner's impairment

The inclusion of guidance for treating practitioners about things to take into consideration when assessing the potential risk of an impairment is welcome (Section 141B(5)). However ANZCA believes that further clarification is required around the definition of impairment. The full definition of impairment as defined in the National Law should be included here to avoid confusion (i.e. 'a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect - (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or (b) for a student, the student's capacity to undertake clinical training— (i) as part of the approved program of study in which the student is enrolled; or (ii) arranged by an education provider').

The range of circumstances in which confidentiality is not guaranteed by legislation should be clearly defined.

Further, ANZCA believes that the guidance provided surrounding impairment should be included in considering the reporting threshold for intoxication as well as impairment.

2.2 Threshold for reporting notifiable conduct

ANZCA supports the reporting threshold focussing on current and prospective risks of harm rather than past behaviour. However the college does not agree that the change in wording from 'risk of substantial harm' to 'substantial risk of harm' unequivocally represents a higher reporting threshold. ANZCA concurs with feedback received from other stakeholders in previous consultations that this change could be interpreted as a lower threshold of reporting which will result in reporting of low-level or trivial harm provided there is a 'substantial risk' that the harm will occur.

Further, the distinction between the current and proposed wording of the reporting threshold may not be immediately apparent and risks being missed or misinterpreted by practitioners.

Issues not addressed by the draft amendments

The draft amendments to the bill do not address the issue of the notifiable conduct process. At present, notifiable conduct reports follow AHPRA's notification process. This implies that a practitioner who may be suffering a physical or mental illness has had a complaint made against them when in fact no such complaint has been made. The investigation and assessment of notifiable reports should be handled through a separate process that is fair, speedy and non-judgmental. It may be appropriate that the notifiable conduct process is undertaken by a reviewer or ombudsman who is independent of AHPRA.

In addition, ANZCA believes there is a need for a communications campaign for health practitioners about mandatory reporting, particularly focused on clarifying key definitions such as 'notifiable conduct', 'reasonable belief', 'substantial risk of harm' and 'impairment'. Case studies and examples of what is and what is not notifiable conduct should be included in these communications.

ANZCA thanks the Queensland Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for the opportunity to comment on the proposed amendments to this bill. Should you require any further information, please contact Clea Hincks, Director, Safety and Advocacy via email [REDACTED] or [REDACTED]

Yours sincerely



Dr Rodney Mitchell
President