



Mr Aaron Harper MP, Chair  
Health, Communities, Disability Services and Domestic and  
Family Violence Prevention Committee  
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Via email: [health@parliament.qld.gov.au](mailto:health@parliament.qld.gov.au)

26 November 2018

Dear Mr Harper

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

The Australian Psychological Society (APS) is the largest professional association for psychology in Australia with over 24,000 members. The APS has serious concerns with the proposed Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018 as it pertains to mandatory reporting and ask the Queensland Government to address these issues to ensure the safety and wellbeing of the public and of health professionals.

The APS provided considerable feedback to the COAG Health Council during their consultations on the Health Practitioner Regulation National Law, particularly in relation to mandatory reporting (see attached). We argued that the mandatory reporting laws in Western Australia offer an exemplar approach to ensure the protection of both members of the public and health professionals; it therefore provides the *ideal* model for the other States and Territories. Our submission also made 'step-down' recommendations if the full Western Australian approach was not able to be implemented.

Our feedback to the COAG consultation did not result in any changes to the legislation - only the inclusion of 'Explanatory Notes'. The APS do not believe this is sufficient to ensure the safety of both patients and health professionals and ask the Queensland Government to ensure that the issues we raised in our submission (attached) are included in the legislation. It is vital that the legislation protects patients but that it also ensures health practitioners feel able to seek appropriate and effective help when required. Health practitioners must be able to access health care in the same way as all members of the community.

Regards

A handwritten signature in black ink, appearing to read 'Frances Mirabelli', written in a cursive style.

Frances Mirabelli  
Chief Executive Officer



3 September 2018

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COAG Health Council  
Mandatory reporting law reforms  
Submitted via email: [NRAS.Stage1A@health.qld.gov.au](mailto:NRAS.Stage1A@health.qld.gov.au)

To whom it may concern,

### **Proposed reforms for mandatory reporting by treating practitioners**

The Australian Psychological Society (APS) welcomes the opportunity to provide a submission to the COAG Health Council regarding the proposed reforms to *Health Practitioners Regulation National Law* for mandatory reporting by treating practitioners.

The APS is the largest professional organisation for psychologists in Australia representing approximately 24,000 members of whom a significant portion practice as mental health clinicians delivering evidence-based psychological services to consumers with mental health disorders. Psychologists also regularly provide services to registered health practitioners who require support to address mental health concerns or who require psychological services to assist them in their role as a health professional.

The APS considers that there is good evidence that the 'Western Australian model' (i.e., exemption from mandatory reporting for treating practitioners) is working effectively to protect the public and practitioners. However, if this approach cannot be adopted by the COAG Health Council, then the APS seek to ensure that the adopted legislation protects the public from harm while ensuring that health practitioners feel able to seek appropriate and effective help when required; that is, that health practitioners are able to access health care in the same way as all members of the community. Achieving this goal will require:

- Removing barriers to help seeking for practitioners
- Facilitating practitioner-patients to be open and honest with their treating practitioner and not withhold information due to fear of being subject to mandatory reporting
- Facilitating practitioners to feel confident in providing treatment services to other health practitioners/students for the benefit of the practitioner/student, the public, and the broader health professions.

It is critical that the changes ensure consistency in the interpretation of the legislation by all stakeholders. The legislation and accompanying policy documents/guidelines must be written in such a way as to maximise consistent interpretation by all relevant stakeholders including the public, the Australian Health Practitioner Regulation Agency (AHPRA), treating practitioners, lawyers, government and the practitioner-patient. Failure to achieve consistency of interpretation by the treating practitioner and the practitioner-patient is essential to prevent inadvertently causing harm to the public (though a practitioners failure to seek help or incomplete disclosure of information to the treating practitioner), and ultimately harm to the practitioner-patient.

The APS contends that the proposed legislation and supporting documents require further modification in order to ensure they protect the public from harm and enable health practitioners to seek appropriate and effective help when required. The APS recommend the following amendments.

### 1. Both 'risk' and 'harm' need to be qualified

The proposal includes a change in terminology related to both *risk* and *harm*: specifically, it is proposed to change 'risk of substantial harm' to 'substantial risk of harm'. However, the phrase 'substantial risk of harm' leaves the construct of 'harm' unqualified. For instance, the practitioner-patient might be at substantial risk of causing *minimal* harm (e.g., reduced verbal skills) ranging to being at substantial risk of causing *extensive* harm (e.g., giving the wrong dosage of a medication). The APS acknowledges the dual purpose of laws for mandatory reporting for treating practitioners in that they must both protect the public while also encouraging treating practitioners to seek help. However, the phrase 'substantial risk of harm' (with no qualifier of the extent of harm) appears to *increase* the likelihood of reporting by the treating practitioner as they attempt to comply with the legislation.

The phrase 'substantial risk of harm' (with no qualifier of the extent of harm) appears to increase the likelihood that the practitioner-patient will interpret the legislation to mean that the treating practitioner will report them for a substantial risk of ANY harm (even if minimal) and hence reduce help-seeking behavior. As such, the APS does not believe the proposed wording provides any additional protection to the public, nor does it increase the likelihood of help-seeking by the practitioner-patient

**Recommendation 1:** *The APS recommends that both the terms 'risk' and 'harm' be qualified in the proposed legislation.*

### 2. Consistent assessment of both the level of risk and the level of potential harm

The proposed legislation contains various approaches to determining the threshold for mandatory reporting associated with harm caused by *intoxication, impairment or a significant departure from professional standards*. The proposed decision tree indicates that the types of factors/broader issues to be considered for determining the risk associated with impairment (e.g., severity, steps being taken to manage issue, effectiveness of treatment) do *not* extend to intoxication or departure from professional standards.

The proposed legislation clearly states that where there is intoxication at work or a significant departure from professional standards, the practitioner must assess the level of risk to the public. The assessment of risk is a nuanced decision based on both past behavior and also dynamic or changeable factors that need to be taken into account (as outlined at the bottom of page 11 of the consultation paper). The wording of the legislation states that the "...health practitioner **IS** placing the public at risk of harm by practicing the profession... while intoxicated by alcohol or drugs...or... in a way that constitutes a significant departure from accepted professional standards". As a risk assessment is a prediction of future behavior and not necessarily based only on past behavior (actuarial/static and unchanging), it requires the treating practitioner to make a professional judgment about the ongoing nature of that risk. This requires a holistic and nuanced approach that considers dynamic/changeable factors, such as the considerations outlined section 141B (5) - which currently only apply when the practitioner-patient has an impairment.

Only by considering these factors can the treating practitioner make a thorough assessment of the risk level and also the potential level of harm and then marry these assessments in order to determine whether the threshold for mandatory reporting has been met. Without the considerations outlined in s141B (5), it is likely that disclosure of intoxication at work or a significant departure from professional standards, even when it has only occurred once, could encourage the treating practitioner to make a mandatory report in order to reduce their risk of repercussions associated with not reporting. The inconsistent approach to the assessment of risk and harm in the proposed reforms will likely lead to the inconsistent application of risk assessment principle in the law. The flow on effect of variable interpretations is that practitioner-patients are likely to avoid disclosing this information to their treating practitioner which places the public at a higher risk of harm.

There are very clear and clinically relevant reasons why the considerations outlined in s141B (5) should be extended to intoxication and significant departures from professional standards. The APS believes that in order to make a professional judgement about risk/harm related to intoxication and departure from standards, the treating practitioner **MUST** consider a range of factors such as those currently only applied to assessing risk in regard to impairment. Without extending these considerations to intoxication and departure from standards, treating practitioners are likely to report practitioners in order to comply with the law. The practitioner-patient is likely to fail to disclose intoxication at work (a serious threat to the public) as a result of interpreting the legislation as requiring the treating practitioner to make a mandatory report due to the absence of requiring the treating practitioner to consider all factors impacting on both risk and harm. This situation places the public at a *higher* risk of harm.

**Recommendation 2:** *Given that 'impairment' is defined in the National Law as "A physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect .... A person's capacity to practice their profession", the APS recommends that the intent of the legislation would be better met by simplifying the decision tree by extending the considerations allowed for impairment to also apply to intoxication and significant departure from professional standards.*

### 3. Risk of sexual misconduct

The legislation refers to the treating practitioner forming a reasonable belief that there is a 'risk of sexual misconduct'. This is a newly introduced term that while having legal meaning, has limited meaning for practitioners and is difficult to reliably and validly assess. This will create considerable lack of clarity among both treating practitioners and practitioner-patients about when the threshold for a reasonable belief has been reached. Without clear guidance for practitioners as to what behaviours constitute threshold risk level, there will continue to be barriers to help seeking.

**Recommendation 3:** *The APS recommends that clear guidelines be developed to assist practitioners to identify behaviours that would be indicative of the threshold being met.*

### 4. Students

The APS makes no recommendation in regard to the application of mandatory reporting reforms for psychology students as they have a different registration status to students in other regulated health professions. That is, postgraduate psychology students are not registered 'students' as they are in other AHPRA-regulated professions; rather they are registered as 'provisional psychologists' and are therefore subject to the same standards as

fully registered psychologists. The APS believes there is no reason why provisionally registered psychologists should be treated any differently to a psychologist with full registration status.

Thank you for the opportunity to respond to the COAG Health Council about the proposed reforms to the Health Practitioners Regulation National Law for mandatory reporting by treating practitioners. The APS would be happy to provide further comment about these issues. I can be contacted at [REDACTED] or [REDACTED]

Kind regards



**Frances Mirabelli**  
**Chief Executive Officer**