

30 August 2018

Avant Mutual Group Limited
ABN 58 123 154 898

Office address
Level 6, Darling Park 3
201 Sussex Street, Sydney NSW 2000

Postal address
PO Box 746 Queen Victoria Building
Sydney NSW 1230

DX 11583 Sydney Downtown
avant.org.au

Telephone 02 9260 9000 **Fax** 02 9261 2921
Freecall 1800 128 268 **Freefax** 1800 228 268

COAG Health Council

By email: NRAS.stage1A@health.qld.gov.au

Consultation on proposed reforms for mandatory reporting by treating practitioners

Thank you for the opportunity to provide input into the COAG Health Council's proposed mandatory reporting reforms.

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 75,000 healthcare practitioners and students around Australia.

We have reviewed the proposed reforms and provide the following comments in response.

Section 140 definition of notifiable conduct

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.

Answers to consultation questions

1. *Does the proposed legislation 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?*

While we maintain our view that adoption of the Western Australian treating practitioner exemption from mandatory reporting is the best way to ensure that health practitioners can seek help when needed, we are pleased to see amendments to section 141 of the National Law that:

- incorporate a higher threshold for reporting the three types of notifiable conduct (impairment, intoxication and departure from standards)
- recognise the interrelationship that can occur between the three types of notifiable conduct and allow the treating practitioner to assess the risk to the public holistically
- allow the treating practitioner to consider various factors relating to impairment ("impairment factors") when assessing risk.

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

We are hopeful that the amendments will assist to overcome the profession's concerns that current mandatory reporting obligations are a barrier to seeking appropriate treatment when needed.

2. *Does the proposed legislation give appropriate guidance to treating practitioners about factors they may take into account when considering a registered health practitioner's impairment?*

We agree with the factors listed in section 141(5). These factors reflect the practice as outlined in the literature² and the policy position taken by the Medical Board of Australia³.

Our main concerns with the provision relate to how treating practitioners might apply them in practice:

- Practitioners may not appreciate the nuances of “substantial risk of harm” (new provision) versus “risk of substantial harm” (current provision), despite the helpful table on page 10 of the consultation paper.
- “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.

Other comments

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, engaged by professional indemnity insurers, or are members of quality assurance committees (as outlined in the current legislation in s.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.

² Bismark M, Spittal M, Morris J, Studdert D “Reporting of health practitioners by their treating practitioner under Australia's national mandatory reporting law” Medical Journal of Australia 204(1) 18 January 2016 <https://www.mja.com.au/journal/2016/204/1/reporting-health-practitioners-their-treating-practitioner-under-australias>

³ Flynn J “The who, when and what of mandatory reporting” Australian Doctor, 17 June 2015

Finally, education of practitioners will be critical to the success of the new provision in removing barriers to practitioners seeking treatment.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Georgie", followed by a long, horizontal, slightly wavy line that extends to the right.

Georgie Haysom
Head of Advocacy

Direct: (02) 9260 9185

Email: georgie.haysom@avant.org.au