MIIAA Submission
to the
Senate Community Affairs Committee
inquiry into the
National Registration and Accreditation Scheme for Doctors and other Health Workers

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The Medical Indemnity Industry Association of Australia (MIIAA) is the peak body for the Australian Medical Indemnity Industry and represents its members on issues of common interest or concern. The MIIAA is an industry association and its members include Australian based medical indemnity insurers and medical defence organisations. Members of the MIIAA represent approximately 75% of insured doctors in Australia.

The MIIAA supports the concept of a national registration scheme that includes a national register for the health professions and provides for consistency in the handling of complaints against health professionals across Australia. However, the MIIAA is concerned that the proposed scheme is unnecessarily complex and will not achieve the objectives set out in the Intergovernmental Agreement. The MIIAA makes the following submissions with respect to the matters referred to the Senate Community Affairs Committee. These submissions relate to aspects of items b) and d) of the Committee's terms of reference

Mandatory Reporting: Our primary position is it is not required

The MIIAA does not support mandatory reporting obligations. The MIIAA supports the existing ethical obligations and codes of professional conduct which govern the reporting of colleagues by health professionals.

The paramount objective of the national registration scheme is the protection of public health and safety and the MIIAA rejects the suggestion that mandatory reporting improves public health and safety.

A statutory duty to report is likely to create a punitive atmosphere and a culture of fear among health professionals that will limit disclosure of issues. The MIIAA is concerned that the introduction of mandatory reporting may, in fact, be counter productive to the policy objective of protection of the public.

Mandatory reporting is inimical to the collegiate approach of peer discussion, which is vital to maintaining professional competence and improving performance. The willingness of health practitioners to openly discuss medical errors is vital to identify adverse events and introduce processes to avoid them. Mandatory reporting prevents the creation of the open, trusting and learning environment which benefits patients.

Mandatory reporting risks diminishing the impact of important programmes such as Open Disclosure. For example in NSW a State-wide incident management reporting system and Open Disclosure programme has sought to bring about a cultural and systemic change to improve safety and quality. The success of these initiatives depends on the trust of practitioners in a climate where historically practitioners' perceptions of medico-legal risk act as a barrier to full and frank disclosure of adverse events.

Mandatory reporting is likely to discourage practitioners from disclosing incidents and seeking assistance from colleagues, treating doctors, medical indemnity insurers and Health Advisory Services. These play an integral role in maintaining professional standards. Mandatory reporting may see a diminution of health practitioners' trust and confidence in services that assist in maintaining professional standards, and practitioner's health.

Mandatory Report : Our secondary position is that if it is required it must be workable

The MIIAA submits that if mandatory reporting is adopted it should not include issues related to clinical care for the reasons set out above.

Reporting should be limited to conduct such as;

- practising while intoxicated by drugs or alcohol, or
- sexual misconduct in connection with the practice of medicine.

Further if mandatory reporting is adopted the legislation must provide for;

- health/impairment, and
- performance assessment programmes,

to support and assist practitioners to return to safe practice.

The MIIAA submits that if the mandatory reporting is adopted for clinical care issues the model adopted in NSW that requires reporting of conduct that constitutes a flagrant departure from accepted standards of professional practice or competence should be the accepted standard.

The MIIAA submits that if mandatory reporting is adopted that a legislative definition of Reportable Misconduct as set out in Attachment 1 should be adopted.

The MIIAA submits that if mandatory reporting is adopted exceptions must be made for:

- spouses of health practitioners
- for health practitioners who perform functions for or are employed by medical indemnity organisations.

From a medical indemnity insurer perspective, mandatory reporting obligations impact upon the ability of the medical practitioner members of medical indemnity insurer's Councils, Boards and other committees, as well as the employees of the medical indemnity insurer who are health practitioners, to undertake their work. There is a risk that medical practitioners may delay or even fail to report incidents to their medical indemnity insurer, resulting in potential risks to the insurer and the inability of the medical indemnity insurer to provide prompt remediation and implementation of risk management strategies to assist the individual medical practitioner.

Criminal History Checks:

The MIIAA supports legislation requiring criminal history checks for all new applications for registration from 1 July 2010 and for all other registrants to be required to make a declaration on criminal matters at annual renewal and during the registration period.

The MIIAA submits that the requirement to report should be limited to any **conviction for an indictable offence**.

Complaint procedures:

The MIIAA supports a unified national framework for complaints handling with respect to health practitioners. The MIIAA submits that the complaints procedures should embody certain principles.

- The scheme should provide a uniform national framework for complaint handling,
- There should be separation between investigating and prosecuting bodies,
- The scheme should embody separate pathways for dealing with health/impairment matters, performance issues and conduct matters.
- The scheme should provide procedural safeguards for registered practitioners,
- The scheme should provide for merits review of decisions of the investigating body and any determining body.

Conduct Matters:

MIIAA submits that notifications should be directed towards an agency independent of the national board for investigation.

- A strict demarcation needs to exist between those who assess notifications and those tasked with adjudicating on the same. The separation of functions is necessary for the protection of the public and is a paramount consideration.
- The direction of all notifications to a single independent agency will produce economies of scale that are not achievable if notifications were to be directed to 10 or more separate boards
- A centralised investigative body will be better placed to ensure that multidisciplinary systemic matters are dealt with expeditiously

The MIIAA submits that registered practitioners are entitled to legal representation at all hearings. The reasons that favour a right to legal representation are:

- The impact on the public of the outcome of panel hearings;
- The potential adverse impact on health practitioners;
- The public interest in ensuring that the panel hearings are conducted in accordance with the law.

The MIIAA submits that legal representation is necessary to safeguard procedural fairness. It need not increase the level of formality and technicality of proceedings. This process works successfully in the ACT Professional Standards Panels, and has recently been introduced into the NSW legislation.

The MIIAA submits that all decisions made by the investigating and prosecuting bodies should be accompanied by written reasons and that practitioners should have the rights to both procedural and merits reviews of those decisions

The MIIAA submits that all hearings, including Professional Standards Panel, Performance Panel, Health Panel and Tribunal hearings should be confidential.

The MIIAA submits that the reporting of outcomes of any panel or tribunal hearing should be limited to the relevant facts and the findings of the panel or tribunal in so far as they may provide information or assistance to other members of the relevant profession. Reporting of matters should not identify the parties.

The function of the registration board is to protect the public not to punish the practitioner. The publication of the names of practitioners who have had adverse findings made against them amounts to punishment, and does not provide additional protection to the public.

Performance Matters:

The MIIAA supports the inclusion of a performance stream designed to provide an avenue for education and retraining of registered practitioners where inadequacies are identified, while ensuring that the public is properly protected.

The program should complement the conduct and health streams by providing an alternative pathway for dealing with practitioners who are neither impaired nor guilty of unsatisfactory professional conduct or professional misconduct, but for whom the board has concerns about the standard of their clinical performance.

The program should address patterns of practice rather than one-off incidents.

Health / Impairment Matters:

The MIIAA strongly supports the use of a health/impairment stream. There is good evidence that health/impairment programs are very effective

The MIIAA submits that the health pathway must be strictly independent of the conduct and performance pathways.

The MIIAA submits that once a decision is made to deal with a matter as a health matter, only in the most exceptional circumstances should there be an ability to direct the matter into a disciplinary process.

Should you have any queries in relation to this submission contact should be made with:

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ATTACHMENT 1

Reportable Misconduct

(1) A registered practitioner commits reportable misconduct in the following circumstances:

(a) If he or she practises while intoxicated by drugs or alcohol,

(b) If he or she engages in sexual misconduct in connection with the practice of their profession,

(c) If he or she practises in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and whose practice poses a significant risk of serious harm to some other person.

(2) A registered practitioner who knows or believes on reasonable grounds that another registered practitioner has committed reportable misconduct must report the conduct to the Board as soon as practicable unless he or she is exempted from making a report.

(3) A registered practitioner is exempted from making a report to which this section applies in the following circumstances:

(a) where the registered practitioner knows or reasonably believes that a report has already been made;

(b) where the registered practitioner is the spouse (whether *de facto* or *de jure*) of the other registered practitioner;

(c) where the registered practitioner derived the knowledge or belief as a result of a protected confidence;

(d) any other circumstances specified in the Regulations.

Note: Failure to comply with this section may constitute unsatisfactory professional conduct or professional misconduct.

(4) In this section "protected confidence" means a communication made by a person in confidence to another person (called the confidant):

(a) in the course of a relationship in which the confidant was acting in a professional capacity, and

(b) when the confidant was under an express or implied obligation not to disclose the contents, whether or not the obligation arises under law or can be inferred from the nature of the relationship between the person and the confidant.