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## Senate Inquiry into the Australian Health Practitioner Regulation Agency

### AMA submission to the Senate Inquiry into the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law Senate Inquiry – Response to questions taken on notice

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The AMA thanks the Senate Committee for the opportunity to provide responses to questions taken on notice by Dr Antonio Di Dio, the AMA representative who appeared before the Committee in the 8 July 2021 hearing. The below submission further elaborates AMA position on these important matters.

#### **Specific recommendations about particular measures that should be looked at for people practising in rural areas, in terms of how the appeal process could be made more accessible, transparent, timely and affordable for practitioners?**

The AMA has significant concerns about the impact of notifications on doctors practicing in rural areas. We know that for doctors practicing anywhere notifications can trigger premature departure from their practice. In rural areas, where people already have poorer access to health services<sup>1</sup>, this can be particularly devastating.

The AMA recommends the following measures to ensure that appeal processes are made more accessible, transparent, timely and affordable:

- **Shorter notification processing timeframes for rural doctors.** The high number of notifications taking longer than 3-6 months to close is still of significant concern to the AMA. For doctors in general, including those practicing in rural areas this can have a considerable impact on their mental health<sup>2</sup> and ultimately lead to further loss of the rural medical workforce. Notifications for doctors practicing in rural areas should be

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<sup>1</sup> <https://www.aihw.gov.au/reports/rural-remote-australians/rural-remote-health/contents/access-to-health-care>

<sup>2</sup> [https://insightplus.mja.com.au/2018/13/clear-suicide-risk-exists-for-doctors-under-investigation/?utm\\_source=MJA+InSight&utm\\_campaign=9272c0223b-EMAIL\\_CAMPAIGN\\_2018\\_04\\_06&utm\\_medium=email&utm\\_term=0\\_7346f35e23-9272c0223b-42877441](https://insightplus.mja.com.au/2018/13/clear-suicide-risk-exists-for-doctors-under-investigation/?utm_source=MJA+InSight&utm_campaign=9272c0223b-EMAIL_CAMPAIGN_2018_04_06&utm_medium=email&utm_term=0_7346f35e23-9272c0223b-42877441)

given priority when assessed under the national scheme, and should be handled in much shorter timeframes.

- **Adequate and acceptable timeframe for appeals by rural doctors.** Appeals process for all doctors, including those practicing in rural areas should be fair and accessible and based on principles of natural justice. While the appeal process is ongoing, Ahpra/MBA should not be allowed to issue public warnings, as stipulated by Tranche 2 amendments to the National Law. The AMA calls on the Senate Committee to utilise this inquiry and its powers to ensure that this specific element of Tranche 2 changes is not implemented.
- **Public warnings for rural doctors.** It is the AMA position that only after the appeals process is completed should Ahpra and the National Boards be allowed to issue statements about practitioners who are subject to investigations or disciplinary proceedings. This is particularly relevant for rural doctors. The remote communities are often very dependent on their medical practitioner, who could be their only access to medical care. Ahpra therefore must ensure that their actions consider the impact of public warnings for rural doctors. In combination with shorter processing timeframes and more accessible appeals processes, this will ensure the patient safety while at the same time protecting the doctors and supporting the rural workforce.
- **Process affordability.** Medical and professional indemnity insurance is a good mechanism we have in place to ensure access and affordability of relevant processes. For doctors practicing in rural areas, this is different, as many rural GPs or rural generalist will provide services in the local hospital or health service in addition to their private practice.. A good example of ensuring that there are mechanisms in place to protect doctors working in rural areas, that are affordable to medical practitioners is the Medical Indemnity Insurance to general practitioners practicing in rural Victoria offered by the Victorian State Government<sup>3</sup>.

### **Relating to the proposed tranche 2 changes, further reference the issue of a public warning about a practitioner before a matter's considered by a tribunal.**

The AMA does not support the Medical Board or Ahpra being able to issue a public warning before a tribunal has completed its actions. To do so would imply guilt and is likely to ruin a practitioner's reputation. A public warning is a severe and non-retractable step and should be undertaken only after a health practitioner has been shown to have breached a code of conduct or convicted of a relevant offence. Under the current circumstances the Medical Board is able to issue a media statement at the conclusion of the tribunal process, which the AMA believes is entirely appropriate especially in the absence of evidence that this system is not working.

The AMA supports the inclusion of a show cause process for a public statement and the ability to appeal a decision to issue a public statement. The provisions for revision (section 159S) or revocation (section 159T) of a public statement do not adequately address the issue that once a statement is made the practitioner's reputation is damaged permanently. The reality is that media organisations that publish the initial statement have no obligation to publish the

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<sup>3</sup> <https://www.vmia.vic.gov.au/-/media/Internet/Content-Documents/Insure/Policies/Medical/Medical-Indemnity-Rural-GP-FAQs-2021-2022.ashx?rev=f445904d0ddb4b269fdf086930324209&la=en&hash=CA1E8A1D00079453AF0A5FBD9F535B5F5367B59F>

correction or revocation. The AMA believes that this will lead to significant pain and suffering being inflicted on medical practitioners who undergo this process.

The AMA notes also that, while section 159R includes a show cause notice and decisions are appealable:

- any submissions must be made “within the stated time” (section 159R(1)(d)); and
- the regulatory body is only required to give one business day’s notice of their decision to proceed with publication (section 159R(4)(b)).

Practitioners should be given at least 7 days in which to lodge a submission and at least three business days’ notice of intention to publish (to give them time to lodge an appeal).

In the context of rural doctors, the AMA believes that there should be consideration of potential reputational damage and its impact on both the doctors and the rural communities. Ahpra and MBA fail to realise that notifications and their public statements on notifications cause irrevocable damage to doctors’ reputation. This is particularly so in rural areas, where the numbers of doctors are already low, communities are small and information spreads quickly. Having negative information about doctors spread without the tribunal process being completed can deter these communities, that are already vulnerable and without adequate access to appropriate healthcare, from seeking medical attention when they need it.

The AMA would also like to provide **additional information in relation to the question by Senator Urquhart, about the support that doctors and other health professionals get if they have a case raised with them.**

Doctors Health Services (Drs4Drs) was established by the AMA as a subsidiary company in 2015. It receives funding from two principal sources to support the medical profession and medical students across the nation, with their physical and mental health wellbeing. Drs4Drs receives funding from the Medical Board of Australia/Ahpra which is distributed to support the State and Territory doctors’ health services deliver agreed core medical services. Whilst these services are funded by Ahpra, Drs4Drs operates independently from both the Medical Board and Ahpra.

Drs4Drs also receives funding from the Department of Health and these funds have been used to establish (1300 Drs4Drs) a 24/7, free, mental health crisis and non-urgent mental health support. This support is provided from experienced mental health practitioners through a third-party provider contract.

Drs4Drs has created an informative website (<https://www.drs4drs.com.au/>). It has resources to assist meet the objectives of educating and supporting the profession to maintain mental and physical health and wellbeing and to direct to support services when needed.

The free learning modules accessible through the website, enable doctors and medical students to obtain a greater knowledge of their own, and their colleagues’ health and wellbeing, and importantly provides strategies for supporting a colleague when needed. Counsellors supporting the profession via the 1300 Drs4Drs mental health support service are required to complete the learning modules prior to counselling members of the profession or medical students.

Finally, the AMA thanks the Committee and would like to use this opportunity to correct the statements made in our submission and during the hearing by Dr Dio in regard to the National Assessment Committees. Mistakenly, Dr Di Dio stated that the National Assessment Committees haven't been established. To the best of AMA knowledge, the Committees have been established and are operational<sup>4</sup>. They meet five times a week and are comprised of medical practitioners and community members<sup>5</sup>. Further information on the Committees can be provided by Ahpra/MBA.

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<sup>4</sup> <https://www.ahpra.gov.au/Publications/Annual-reports/Annual-Report-2020.aspx>

<sup>5</sup> <https://www.ahpra.gov.au/sitecore/content/Medical/News/2020-09-09-communique.aspx>