

North Nowra Medical practice
23 McMahons Rd,
North Nowra. NSW 2541

Senator Moore
Chair, Senate Standing Committee on Community Affairs
PO Box 5100,
Parliament House
Canberra. ACT. 2600

22nd July, 2009

Dear Senator Moore,

We wish to make a submission to the Senate Standing Committee on Community affairs in response to the draft of the "Health Practitioner Regulation National Law 2009 (Bill B)". Our submission particularly relates to sections 155 – 157 of the draft bill, regarding mandatory reporting by health professionals.

Although limited exemptions are included in the draft bill re duty of mandatory reporting, we believe that these exemptions do not go far enough. As General Practitioners who have worked in the ACT and NSW for over 25 years, we are very concerned about the way this proposed bill will affect our practice of medicine in the following ways:

1. As employers of other doctors, we will be required to report to a National Agency the conduct of any of our employed doctors who we suspect to have "departed from accepted professional standards". This will create a culture of fear and failure to disclose within practices like ours, where errors may have occurred, and possibly lead to delayed follow up of situations requiring prompt remedial attention. It will make frank discussions and exchange of information in clinical settings less safe, and create a culture of suspicion among colleagues, who presently feel confident to seek second opinions, ask questions, de-brief about difficult cases, and receive support from one another. This is deleterious to the standard of medical practice which we wish to see promoted in our practice.
2. As doctors who treat other doctors as patients, we would lose our current protection to safe-guard what is disclosed to us, and may be required to report a doctor-patient's confidential information to a National Agency if the information shared is even suggestive of a departure "from accepted professional standards" or of "impairment", even in its early stages. This forces treating doctors to be both judge and jury of doctor-patients, does not support the "presumption of innocence" and may mean that doctor-patients fail to disclose important health information which requires appropriate treatment and intervention.
3. As doctors who attend other doctors as doctor-patients ourselves, we would lose the right to privacy, confidentiality and protection in our own medical care. This draft bill

denies doctors the right which all other members of our society have, which is the right to receive good quality, confidential care in a safe environment, knowing that our treating doctors are our advocates and seek our best outcomes. This draft legislation is a breach of our human rights, and is also discriminatory. No other professionals, including the lawyers and politicians who will be drafting and debating this bill, would subject themselves to this invasion of their privacy and civil rights. **On the basis of (2) and (3), we therefore strongly urge that treating doctors are exempted from mandatory reporting of other doctors.**

4. As spouses of each other as medical doctors, we would be required by the draft bill to mandatorily report on one another if there was even a suspicion of “impairment” or a departure “from accepted professional standards” on even a single occasion. Once again, this is a breach of our human rights and is discriminatory, as other professionals and politicians are not subjected to this breach of their privacy. Doctors require a safe and supportive environment in their own home in order to practice optimally, and fear that disclosure to a spouse of work-related issues could result in punitive action is extremely destructive to a sense of well-being for any practitioner. **We therefore strongly urge that spouses be exempt from mandatory reporting of doctors.**
5. As doctors who are able to access Doctors’ Health Advisory Services, we need to be able to receive confidential, informed and supportive input from such agencies. Fear that information disclosed could lead to punitive action or legal consequences would definitely mean that such discussions are likely to be avoided, limited or anonymous, and may therefore mean that doctors do not receive the accurate and personal support that they require. **We therefore urge that DHAS doctors are exempt from mandatory reporting on other doctors.**
6. As close friends of a General Practitioner who committed suicide this year, we are writing this submission. Because he believed that mandatory reporting could have public and humiliating consequences for himself and his family, he was afraid to discuss his professional concerns with his spouse, colleagues, DHAS or treating doctors. This was clearly documented in his suicide letter. We are deeply concerned that he has paid the highest price for this fear of mandatory reporting, and there may be other doctors in the same position if this draft bill is legalised without further exemptions. Doctors deserve to have confidentiality and privacy in their homes, with their treating doctors, when other doctors attend them for medical care, and when they contact DHASs themselves. **We therefore urge in the strongest possible terms that spouses, treating doctors and DHAS doctors are exempt from mandatory reporting in this bill.**
7. **Division 4: 160 (3)(b)** already indicates that notice of a complaint is not required to be given to a practitioner or student if it would “place at risk a person’s health or safety or place a person at risk of intimidation or harassment”. **We believe that this draft bill, without the exemptions listed above, certainly places at risk doctors’ health and safety, and constitutes intimidation and harassment.** We sincerely hope that the issues raised above will be considered during the debating and wording of this draft bill, such that it is indeed a safe and effective document for patients and doctors alike.

Yours faithfully,

Dr Michele Browne and Dr Michael Browne

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