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Dear [redacted]

Public consultation on a draft Data strategy

Thank you for the opportunity to participate in the public consultation on a draft Data strategy (**Consultation**) and inviting responses to specific questions about the future use of the data collected and held by the Australian Health Practitioner Regulation Agency (**Ahpra**) and general comments on the draft Data strategy.

MDA National is a member-owned medical defence organisation that has been supporting doctors since 1925. With over 38,000 Members, we protect the best interests of doctors and promote good medical practice. We are committed to offering the expert advice, personalised support and unwavering care that our Members need to keep on focusing on providing quality patient care. We work in close partnership with the medical profession on issues which impact medical practice.

MDA National provides responses to the "Questions for consideration" as outlined on page 15 of the Consultation paper, being:

1. Draft Data strategy
2. Focus area 1: The public register
3. Focus area 2: Data sharing
4. Focus area 3: Advanced analytics
5. Other

Draft Data strategy

1. *Does the draft Data strategy cover the right issues?*

    a) While the draft Data strategy covers the right issues, it is difficult for meaningful submissions to be made in the absence of further detail as to how the strategy would function in practice,

including decision-making authority. We submit that a more detailed proposal ought to be provided to stakeholders to enable meaningful submissions to be made.

b) We note that the "Domains and objectives" do not make any reference to the rights of, or any consideration being given to, how data sharing may affect practitioners, including in relation to principles of natural justice. In our view, the proposed use of the data and principles guiding its usage, is heavily weighted toward consumer experience at the expense of having proper regard to the impact it may have on practitioners.

2. *Do you think that anything should be added to or removed from the draft Data strategy?*

c) Please see our comments at a) and b) above.

Focus area 1: The public register

3. *Do you agree with adding more information to the public register?*
   - *If yes, what additional information do you think should be included?*
   - *If no, please share your reasons*

d) We see the utility and value in adding more information to the national register and the benefits it may provide to *all* stakeholders. However, consideration must be given to (among other things) the relevant purpose for which information is published and the impact on the medical profession.

e) We note that many of the pieces of information listed in paragraph 29 of the Consultation paper may already be available via another source, such as *Google* reviews and doctor rating websites (e.g. *RateMDs*). For example, a practitioner's additional qualifications, area(s) of special interest and practice names and locations may be identified by practice profiles accessed via search engines.

f) The publication of consumer generated feedback has the potential to be misused or misleading given the tendency for *negative* feedback to be provided about a practitioner over a consumer's positive experiences. The publication of such feedback by a regulatory body gives legitimacy to feedback which may otherwise be unsubstantiated, without proper basis or vexatious. Given the reliance and trust that consumers place on the national register, the publication of patient feedback on it may have severe reputational and financial repercussions for practitioners in circumstances where they are not provided an opportunity to respond to or address the feedback. This offends principles of procedural fairness.

g) In its role as regulator, Ahpra has a duty to ensure that any information it publishes is objective, factual and current. On that basis, we are of the view that the information it publishes must be limited to registration status, qualifications, memberships of professional associations and *current* restrictions. The publication of information such as consumer generated feedback is inconsistent with Ahpra's duties as an impartial regulator. Ironically, the publication of such information may have the reverse effect of Ahpra's intention in implementing this strategy, leading to *less* trust in the national scheme. In our view, Ahpra needs to be cautious of making itself a "one stop shop" for all information about the

practitioners it registers and be cognisant of its role as a regulator that ought to innately be independent and unbiased limiting published information to that which is consistent with its purpose.

4. *Do you agree with adding health practitioners' disciplinary history to the public register?*
   - *If yes, how much detail should be included?*
   - *If no, please share your reasons*

h) We do not agree with adding health practitioners' disciplinary history to the public register. Doing so is inconsistent with a number of fundamental objectives of fair and proper administrative decision-making. While making the public aware of *current* restrictions (which may lead to concerns) on a practitioner's registration is necessary, holding practitioners unreasonably accountable on an ongoing basis by publishing restrictions for deficiencies or concerns that have been addressed or remediated is punitive. In our view, such an approach is likely to lead to significant discord and anxiety among the profession.

5. *How long should a health practitioner's disciplinary history be published on the public register?*

i) In our view, a health practitioner's disciplinary history should only be published on the public register until the practitioner has complied with any restrictions arising out of it. As stated above, the never-ending publication of a disciplinary history is punitive to the practitioner and offends the principles of procedural fairness/natural justice. The conclusion that must necessarily be drawn when a practitioner has complied with any restriction(s), and it (they) are subsequently removed (whether by the Board of its own volition or upon application of the practitioner) is that the shortcomings/deficiencies/concerns with the practitioner's practise have now been addressed. To continue to publish either the decision that *led* to the imposition of such restrictions or the restrictions imposed *as a result* of the decision, could only be characterised as punitive and have the potential to severely impact a practitioner's practise and their mental wellbeing. It effectively acts as an ongoing chastisement in the absence of any current concerns about that practitioner. In a context where Ahpra appears to be cognisant of the wellbeing of the practitioners it registers, such a decision would be inconsistent with this objective.

6. *Who should be able to add additional information to the public register?*

j) We hold significant concerns about the public being able to add information to the public register. We submit that, out of the potential additional information that could be added to a practitioner's registration as outlined in paragraph 29 of the Consultation paper, there are a number which should require practitioner approval prior to being published. By way of example, that would include practice names and locations. Many practitioners are the victims of vexatious and defamatory notifications and notifiers who have threatened to harm them. Making it easier for the public to identify where a practitioner is currently practising has the potential to put practitioners' and their families' safety in danger.

k) On this basis, Ahpra and the relevant practitioner should be the only entities able to add additional information to the public register. With respect to Ahpra adding information, this should also involve consultation with the practitioner, where appropriate.

7. *Are there other ways to enhance the effectiveness and value of the public register for the public and/or practitioners?*

    l) This has been addressed in our response to the questions above.

Focus area 2: Data sharing

8. *Our National Law enables us to share data with some other organisations in certain situations. Do you have suggestions about whether Ahpra could share data with and/or receive data from other organisations to benefit the public, practitioners and/or our regulatory work?*

    m) We have no submissions to make in relation to Data sharing and reiterate that any proposed data sharing needs to be sufficiently detailed to enable stakeholders to meaningfully make submissions in response.

Focus area 3: Advanced analytics

9. *Do you have any suggestions about how Ahpra should approach using advanced analytics and machine learning technologies?*

    n) Ahpra ought to exercise extreme caution when considering the use and implementation of advanced analytics and machine learning technologies. While the potential benefits raised are noted, the nature of robust administrative decision-making is such that human input is necessarily required in nearly all circumstances. Without further details about how such a process may work and several worked examples, it is difficult to properly assess how and whether the process may be used in limited circumstances. We are concerned that predictive analytics has the potential to be used at the cost of careful and considered decision making by humans in accordance with principles of procedural fairness. In our view, such data should only be used on a very limited basis and undergo a lengthy trial process with stakeholder engagement before further consideration is given to its implementation.

    o) While Ahpra submits that such technology may '*mitigate the risk of individual human bias'*, it conversely could simplify and streamline notifications which necessarily require detailed, careful analysis and synthesis that can only be provided by human decision-makers with particular skills and expertise. This concern cannot be overstated.

    p) In circumstances where such analytics are utilised, complete transparency is required to ensure that the practitioner whose interests are affected are advised that such "non-human" decision-making tools have been used. We see this as a necessary element of affording procedural fairness to these practitioners. Further, such persons should be provided an opportunity to submit as to why the streamlined decision may be erroneous or not properly considered. The desire for efficiency must not compromise decision-making processes, particularly given the potential repercussions for practitioners in 'higher risk matters'.

    q) While we are more receptive to the idea of analytics being used in Ahpra's *registration* processes, we hold significant concerns about its proposed use in high-risk *notification* matters. In our view, any consideration of the use of analytics must first be trialled in low-risk

matters where there is less likely to be significant repercussions for practitioners at stake. Contribution from stakeholders should be sought after the trial.

r) With respect to the last bullet point in paragraph 48 of the Consultation paper, we urge caution with respect to using social media and forums as a tool to guide consumer confidence. Invariably, such forums are used as opportunities to criticise and complain about practitioners and more rarely used as a medium to provide compliments about, for example, a practitioner's level of service. This has the potential to lead to a misconception or bias regarding the quality of the services provided by a practitioner.

Other

10. Please describe anything else Ahpra should consider in developing the Data strategy.

s) No comment.

If you have any questions or would like to discuss the matter further, please do not hesitate to contact us.

Yours faithfully

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