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**Submission: ACT mandatory reporting by
health practitioners: Fitness to drive**

September 2022

About The Royal Australasian College of Physicians (RACP)

The RACP trains, educates and advocates on behalf of medical specialist physicians and trainees, across Australia and Aotearoa New Zealand. The RACP represents a broad range of medical specialties including general medicine, paediatrics and child health, cardiology, respiratory medicine, neurology, oncology, public health medicine, infectious diseases medicine, occupational and environmental medicine, palliative medicine, sexual health medicine, rehabilitation medicine, geriatric medicine, and addiction medicine. Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients and the broader community.



We acknowledge and pay respect to the Traditional Custodians and Elders – past, present and emerging – of the lands and waters on which RACP members and staff live, learn and work. The RACP acknowledges Māori as tangata whenua and Te Tiriti o Waitangi partners in Aotearoa New Zealand.

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to comment on a draft proposal for legislation that would require certain health practitioners to report when they believe a patient has any permanent or long-term illness, injury or incapacity that may impair their ability to drive a heavy vehicle safely.

This RACP submission to the Transport Canberra and City Services Directorate (TCCS), ACT Government, has been prepared involving key medical specialists and relevant peak body specialty societies, as well as members that practice in the two jurisdictions that have a similar mandatory reporting regime. The RACP acknowledges the significant input from member Dr Bruce Hocking, FAFOEM, FAFPHM, in the development of this submission.

The RACP have provided extensive input in drafting the national medical standards, *Assessing Fitness to Drive* (AFTD), and support effective, evidence-based strategies that improve road safety. RACP members also have extensive experience in the development and implementation of high-level medical standards for workers in other safety critical industries, such as rail and maritime.

Key points

The RACP:

- 1) Supports efforts to ensure safety to the community on Australian roads.
- 2) Provides evidence-based reasons for caution before adopting mandatory reporting by health practitioners. These include the risk to the therapeutic relationship that may render the legislated requirement unable to achieve its objective and incentivises non-disclosure by patients.
- 3) Notes an evidence basis for this legislative proposal has not been provided.
- 4) Suggests consideration of alternatives, such as through a separate systematic medical system process for commercial vehicles, for example with an independent medical body.
- 5) Offers further expert and experienced advice on addressing the Coroner report recommendation to consider legislation, in order to develop an effective way forward. RACP members have extensive experience in medical examinations of safety critical workers in industries such as rail, maritime and aviation, and could contribute to the development of similar systems within road transport.

Coroner recommendations

We refer to two recommendations in the Coroner's Report:

Recommendation (i)

That the Minister for Transport and City Services considers legislative amendment to mandate that health practitioners notify the RTA (Road Transport Authority) when the health practitioner has reasonable cause to believe that a patient is suffering from an illness, disability or deficiency that is likely to endanger the public if the patient drives a heavy vehicle at the time of completing a medical assessment in support of a heavy vehicle licence application, and with an ongoing obligation at any point at which the health practitioner is provided with information reasonably causing him or her to form that belief.

Recommendation (iii)

That the ACT Government mandate that independent health examinations be conducted for those applying for certain classes of heavy vehicle licence, including an obligation for the applicant to allow the assessor access to the applicant's medical history for a period deemed appropriate.

Key points are:

- In other industries the examining medical practitioner reports to the employer that the person is "fit for duty" or "fit for duty subject to medical review" or "temporally unfit for duty"; at no time does the examining doctor disclose the diagnosis to the employer thus maintaining privacy of medical information.

- It is suggested that initially these examinations should be aimed at high-risk drivers, such as those involved in transporting dangerous goods, public transport (buses) and multi-combination vehicles.
- As these examinations are costly, payment should involve extensive discussion with stakeholders, and recognise the current context of difficult times for the trucking industry.
- Regarding examinations and assessment, Australian and New Zealand Society of Occupational Medicine (ANZSOM) has a training package in development with stakeholders, for medical practitioners to conduct health assessments for commercial vehicle drivers to a high standard. The package may be made available online. The ACT may wish to explore this further.

Mandatory reporting by certain health practitioners

Under the current provisions for notifying Access Canberra when a driver is diagnosed with a condition likely to affect driving it is the driver's responsibility and not that of the health practitioner. There is an exception where a health practitioner is of the view that the patient is an imminent threat to public safety and may notify Access Canberra directly.

In some industries such as rail, the employer is directly notified by the medical practitioner that the person is "fit for duty subject to review" et cetera (noting the diagnosis is not given).

By placing the onus of notification of a medical condition on the driver there is an assumption of integrity and honesty by the driver in notifying the authority promptly. However, this can present a moral hazard for a driver, and a commercial driver may be concerned about losing their licence and their livelihood.

Figure 2 from the *Assessing fitness to drive for commercial and private vehicle drivers* (page 25), describes the interactive relationships between worker or patient, health professionals and the road transport authority or Driver Licensing Authority (DLA), generalising across jurisdictions. This suggests the issue is simpler than it is.

Mandatory reporting by a health practitioner has a significant impact on the critical and fundamental medical practitioner-patient relationship.

Full and unfettered disclosure of symptoms is crucial to the medical practitioner-patient relationship so that treatments can be adjusted. Failure to appropriately adjust treatments or advise patients with appropriate medical advice may contribute to adverse outcomes on the road. A shift in trust relationships would potentially work against any benefit from mandating notification. Whilst it is recognised that this is not the intent of the legislation, *perception* by drivers of the intent of the legislation will impact how it operates.

Strong concerns exist regarding the possibility that the requirement for mandatory reporting will have an adverse effect on medical practitioner-patient relationship if there is a perception by patients that open discussion of symptoms may lead to mandatory notification and hence to loss of licence and livelihood. Examples include:

- A patient under management for substance misuse may be reluctant to disclose to their medical practitioner that they have "stopped taking their medications because they upset my stomach".
- A patient under management for a cardiac condition may be reluctant to disclose to their medical practitioner that they have had an episode of palpitations.
- A patient under management for Type I diabetes may be reluctant to disclose to their medical practitioner that they have had "episodes of sweats and gnawing feeling in the stomach".
- A patient under management for epilepsy may be reluctant to disclose to their medical practitioner that they have had episodes of "feeling lightheaded".
- A patient under management for sleep apnoea may be reluctant to disclose to their medical practitioner that they have "several times gone to sleep in front of the tv."

Other cautions and concerns to note regarding mandatory reporting include:

- Potential threats of violence or harm to medical practitioners/practice staff if patients were determined to be unfit to drive.
- Risk of patients misreporting symptoms and/or hiding the severity of symptoms from a medical practitioner in fear of losing their licence.
- Misunderstanding by patients that a medical practitioners role is to diagnose and initiate treatment and ensure the patient is able to resume driving, rather remove the ability to drive/maintain a licence.

Specific points regarding sleep disorders and management in the ACT include:

- Mandatory reporting requires health practitioners to order more maintenance of wakefulness tests (MWTs). Members practising in the ACT have highlighted that there is currently no ability to access MWTs in the public ACT health system due to resourcing.
- Given waitlists of several years to see a sleep specialist in the public ACT health system, the feasibility of a mandatory reporting regime in the ACT must be reviewed.
- There is evidence that professional drivers do not respond accurately to questions regarding sleepiness or sleep disorders, particularly when licensing or work may be impacted.
- Results from a sleep study alone should not be used to determine fitness to drive. There is ample and growing evidence that many patients, even with severe sleep apnoea, are not impacted by sleepiness. Mandatory reporting for all heavy vehicle drivers with even mild sleep apnoea based on a sleep study (approximately 50% of heavy vehicle drivers when tested) would be unnecessary and would make individuals less likely to present for assessment.

Evidence on the effectiveness of mandatory reporting schemes in Australia.

Mandatory schemes operate in South Australia and the Northern Territory. As part of the important consideration that needs to be given to this change in practice it is important to obtain evidence from these jurisdictions to show that:

- 1) Mandatory reporting has led to substantial and critical reports from health practitioners and
- 2) That such reports have led to safety benefits.

Additional comments

The legislation proposal places a significant burden on the health practitioner to consider every patient with a health condition and the potential impact on their ability to operate a heavy vehicle, and if they should hold a heavy vehicle licence. This is not a usual part of provision of healthcare services. This comment references that the framework will apply to all examinations, not just those being undertaken for a purpose related to driver licencing, and that during any examination where a health practitioner forms a belief that a patient's ability to drive a heavy vehicle safely is impaired, the health practitioner should ask if they hold a heavy vehicle licence.

Concluding remarks

The RACP acknowledges the concerns expressed by the Coroner regarding the management of fitness to drive of commercial vehicle drivers. As discussed above there is the potential for unanticipated outcomes which may worsen the situation.

We thank TCCS for this early opportunity to provide feedback as consideration of the most effective ways to improve road safety is undertaken.

The RACP is happy to continue dialogue on this matter and would welcome a meeting of stakeholders, including other relevant medical colleges (particularly the Royal Australian College of General Practitioners and the Royal Australian and New Zealand College of Psychiatrists), as well as industry partners and regulators to discuss this matter further.

If you wish additional information on the material in this submission, please contact the RACP on policy@racp.edu