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Ahpra Data Strategy

AMA submission to the Consultation into the Draft Ahpra Data Strategy

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The AMA supports the adoption of a Data Strategy by Ahpra and welcomes the opportunity to comment on this Draft Data Strategy, including to ensure that the data collected by Ahpra is well managed and used in a safe and strategic way.

The AMA welcomes more effective use of data (enhancing the return on health practitioners' registration fees) to reduce duplication by better integrating data input and removing the requirement for multiple input of the same data, improving Ahpra's workflow and supporting the ability of staff to make quality decisions on regulatory issues. As Ahpra is funded from fees required in order to practise under the National Scheme, we also support appropriate cost recovery from third party organisations for data exchange.

However, the AMA has significant concerns around a number of the proposals outlined in the draft strategy, particularly if its aim is to ensure public protection and build trust and confidence in the system, not just with the general public but also the 1 in 15 people working in Australia as a registered health practitioner.

In particular, the AMA is concerned that proposals to continue to include historic disciplinary action taken against practitioners as well as potentially including third party reviews is unbalanced and tilts the draft strategy towards being too strongly focused on the more negative punitive aspects of data use. In combination with the recent legislative changes allowing regulators to make public statements about practitioners prior to the completion of due process, the draft strategy in its current form will do little to gain the confidence of health practitioners in the administration of the National Scheme.

We also consider that the draft data strategy has missed the opportunity to place greater emphasis on utilising the data available to Ahpra in ways that could be more beneficial to public protection and public benefit.

For example, the AMA believes that Ahpra could work with Australian Digital Health Agency to use its data to standardise processes for practitioners, such as via a national credentialing portal that streamlines new and recurrent credentialing with health services across Australia. Ahpra could also build on existing work with the Department of Health to support more informed workforce modelling.

Furthermore, protecting the privacy of the data provided by the practitioners as part of their registration should be paramount. Registration with Ahpra is mandatory, medical practitioners are obliged to share their personal information with the regulator. There is a significant onus of responsibility on Ahpra to strike the right balance between data disclosure for public good on the one hand, and protecting privacy of its registered members and integrity of data on the other.

Additional comments on specific areas of the draft strategy are provided below, under the consultation themes/headings.

Focus Area 1 – The Public Register

The AMA has serious concerns around the proposals to allow users, including health practitioners, other practitioners and consumers, being able to add additional unverified information to the public register. As the draft strategy states "Ahpra has an obligation to use relevant data to improve public safety in the public interest". The AMA fails to see users and third parties adding information to the register, without verification would reliably contribute to public safety.

The risks include:

- Potential for inaccurate or out of date information about practitioners being included on the public register.
    - The potential inclusion of third party reviews of health practitioners being part of the public register raises major concerns and is an invitation for inaccurate and vexatious claims (including from other practitioners) to be aired publicly – causing irreparable damage to a practitioner's professional reputation, livelihood and mental health.
    - We note in this context that processing times where notifications are made against medical practitioners are taking on average 6 months to resolve and that this time is increasing compared to previous years. Adding yet an additional burden of verifying third party reviews to Ahpra's workload will further exacerbate what is already an unsatisfactory situation.
- The ongoing inclusion of historical regulatory action taken against practitioners on the public register is unnecessarily punitive. Practitioners who have undertaken the necessary remedial actions taken against them as part of a regulatory process, and are practising satisfactorily should have the incentive of knowing that they will not be punished in perpetuity.
- Including historical regulatory action on the Ahpra public register will not only impact further on the mental health of practitioners but will also likely discourage some practitioners from continuing in practice, in turn punishing the communities they previously served.
- The AMA also has significant concerns about the lack of clarity provided in the Draft Strategy about how this unverified information could be used beyond just the public register. For instance, would it be the intention or even the possibility of using the unverified additional information, either practitioner or consumer generated, for other purposes such as in predictive analytics. If the use of unverified, public generated

information is going to be used in any predictive analytics activities, the AMA will not support this proposal.

- Where practitioners add their own data will require them to commit additional time and resources to ensure information is accurate and up to date. This may result in additional practice costs and higher out of pocket charges for patients. Additional time spent on administration may also come at the cost of the time available to undertake clinical work.

The AMA is also unconvinced that data of a more commercial nature such as eligibility for Medicare billing or information subject to rapid change, such as telehealth provision, should be included on the public register. Practitioners generally have their own websites or other digital presence which provides key commercial information including the range of services they provide.

We contend that the wider the scope of information that is included on the public register becomes, the greater the likelihood that the information will be inaccurate or out of date and the value to practitioners and consumers alike will be diminished.

As an example, we note that a proposal to include eligibility to provide vaccines by different groups of health practitioners is highly complex and varies markedly between jurisdictions – likely resulting in the potential for significant inaccuracies by users.

If Ahpra decides to go down the path of unverified information use, the AMA will insist that this feature is enabled only for registered practitioners who want to use it, via an opt-in selection.

Focus Area 2 – Data sharing

The Draft Strategy notes that data is currently exchanged with a range of regulatory bodies as part of existing legislative such as healthcare providers, co-regulators, the Australian Commission on Safety and Quality in Health Care, State/Territory health departments, higher education providers, teaching practitioners. It proposes that the effectiveness and security of this sharing could be enhanced through incorporating techniques such as two-factor authentication.

The AMA supports this interaction and data exchange with organisations that are publicly regulated and where public benefit of that exchange can be demonstrated.

The recent public debate around the secondary use of data in My Health Record should be an important reminder of the public perception and preference for data protection and privacy. The same level of data protection and privacy that was enabled to general population, consumers and patients utilising My Health Record, should be availed to the healthcare professionals who are obligated to provide their data to Ahpra for registration purposes.

The AMA therefore argues that there are important data ownership issues pertaining to data exchange. It is the AMA position that the individual healthcare professional owns his/her data, while Ahpra is merely a holder of that data. Any exchange with other organisations would require explicit consent by the individual healthcare professional.

Although not proposed in the draft strategy, the AMA would vehemently opposes any exchange of data with private health insurers. Private health insurers are not authorised or equipped to handle complaints about care. The AMA doesn't see situations where exchange of data between PHIs and Ahpra would improve public safety. The 'breaches' referred to in this paper would most

likely be limited to issues around charging and billing. The AMA does not support any stated or unstated expansion of the role of Ahpra into the billing practices of medical practitioners.

Additionally, and as per our comment above on data ownership, this type of data exchange would mean sharing of individual data owner's/healthcare professional's information with an external organisation where that that sharing wasn't agreed to by the data owner. This goes against AMA policy on data sharing and data protection, and will therefore not be supported by the AMA.

One way of ensuring the trust in public benefit of data exchange by Ahpra with other relevant stakeholders, could be for Ahpra to maintain a public register of all organisations authorized to use its data. The AMA also calls for the powers of the National Health Practitioner Ombudsman to be reviewed and potentially extended to provide appropriate cover for the data issues arising from potential implementation this Strategy.

Focus Area 3 - Advanced Analytics and Reporting

The AMA acknowledges the use of advanced analytics and reporting can be a powerful tool in enabling Ahpra to perform its statutory duties in a more timely and accurate manner and as indicated by the NSW Ombudsman, new machine technologies have the potential to improve 'accuracy and consistency in decision-making, as well as mitigating the risk of individual human bias'.[1]

The AMA would welcome the use of predictive analytics where it leads to more rapid and fair processing of notifications against practitioners and also in the registration process – particularly by applicants seeking registration from overseas.

However as stated at para 44 of the draft strategy, it is essential that use of new technology is 'applied within a strong legal and ethical framework that **complies with administrative law and the principles of good administrative practice**'. It is important that advanced analytics are used to support rather than replace human judgement or to automate complex regulatory decisions.

Whilst not explicitly stated in the draft strategy document, the AMA has concerns about the source of data that may be utilised in a predictive analytic environment.

For example, using health information of medical practitioners that were obtained as part of mandatory reporting for predictive analytics purposes could further deter doctors from seeking medical help when they need it. The AMA has been calling for changes to the Mandatory Reporting law for some time[2]. Our members have been calling for legislation that is not perceived by the medical profession as discouraging practitioners from seeking medical treatment when they need it. The AMA has significant concerns that doctors will perceive this draft strategy as opening the door to Ahpra using the data obtained through mandatory reporting for predictive analytics. We can see this contributing to higher levels of fear and distrust among the medical profession, causing them to further delay seeking medical help, particularly for mental health issues.

[1] NSW Ombudsman (2021). The new machinery of government: using machine technology in administrative decision-making, www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/the-new-machinery-of-government-using-machine-technology-in-administrative-decision-making

[2] https://www.ama.com.au/sites/default/files/2021-06/AMA%20Submission%20to%20Senate%20inquiry%20into%20Administration%20of%20registration%20and%20notifications%20by%20Ahpra.pdf

The AMA welcomed the decision by the Medical Board to remove the entirely unfair provision to link tribunal proceedings, where there was NO finding against the practitioner. However, we are concerned that under this proposition there is a possibility that any previous proceedings could again be used to the detriment of medical practitioners. We seek assurances from Ahpra that in cases where there were previous complaints that resulted in no findings against the practitioners, these complaints will be excluded from data used for predictive analytics.

The AMA also seeks assurances that vexatious complaints will be screened out of the data used for predictive analytics purposes.

The AMA hears regularly from our members who are psychiatrists, for example, about vexatious complaints they are subjected to from their patients, where a single patient can file multiple complaints. All these are recorded against the doctor's file, and if then used for predictive analytics purposes have the potential of causing grave distress to the doctor, including the risk of ruining their career and their lives. A recent example of a patient who launched 14 different tribunal proceedings against three psychiatrists and made 29 complaints, even though not upheld, caused significant distress to the doctors who were the subject of the vexatious complaints[3].

Conclusion

As stated above, the AMA would like to see the Draft Strategy being more clear about how Ahpra intends to use the data it collects, in particular, how Ahpra intends to streamline processes and improve the experience for health practitioners. It is the AMA view that Ahpra data could be used in ways that could be more beneficial to public protection and public benefit than some of the ways proposed in the Draft Strategy, such as, for example, to inform workforce demand into the future.
Furthermore, in the AMA view, there is a significant onus of responsibility on Ahpra to strike the right balance between data disclosure for public good on the one hand, and protecting the privacy of registered health practitioners and integrity of data on the other.

If uploading of unverified information to the public register by practitioners and consumers alike proceeds, then Ahpra must make it an opt-in feature, only for those practitioners who wish to use it. We are also strongly opposed to the retention of historical regulatory action taken against practitioners who have satisfactorily met their obligations.

The AMA also calls for the powers of the National Health Practitioner Ombudsman to be reviewed to cover the data issues arising from potential implementation this strategy.

As stated previously, the AMA sees merit to Ahpra developing and implementing a Data Strategy and we support the better use of data to support health practitioners' interactions with the National Scheme.

However, we remain concerned about the issues that have been identified above and would need to see those issues being addressed before

The AMA remains open to working with Ahpra further to refine the Draft Strategy.

[3] http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT//2021/994.html#fnB32

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