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Submitted via: [TCCS\\_roadtransportregulation@act.gov.au](mailto:TCCS_roadtransportregulation@act.gov.au)

Dear Ms Cox

**APS Response to the Consultation on Mandatory Reporting of Medical Conditions - Fitness to Drive Heavy Vehicles**

The Australian Psychological Society (APS) welcomes the opportunity to provide feedback on the ACT draft proposal for legislation regarding mandatory reporting of medical conditions that may impact fitness to drive heavy vehicles.

As with all our advocacy at the APS, we consider our response in light of the United Nations Sustainable Development Goals (SDGs).<sup>1</sup> Of particular relevance are SDG 3, which seeks to “ensure healthy lives and promote well-being for all at all ages”<sup>2</sup> and target SDG 16 which aims to “provide justice for all, and build effective, accountable and inclusive institutions at all levels”.<sup>2</sup>

The APS understands that as part of the Coronial Inquest into the death of Blake Andrew Corney, it was recommended that a mandatory reporting framework be applied to health practitioners registered under the *Health Practitioner Regulation National Law*, which includes psychologists. We are aware that recommendations from Coronial inquests relevant to assessing fitness to drive from other Australian and New Zealand jurisdictions, dating back to 2009, have similarly recommended the introduction of mandatory reporting requirements.<sup>3</sup> In addition, the APS understands that current legislation in South Australian and the Northern Territory impose mandatory reporting requirements on medical and health professionals, while all other Australian jurisdictions currently have no such mandatory reporting requirements.

It is the APS’ view that all psychologists, as registered health practitioners, already have an obligation to be aware of the Assessing Fitness to Drive (AFTD) Guidelines in their work.<sup>4</sup> For example, psychologists working within alcohol and other drug treatment services, or seeing patients with substance misuse concerns, would need to be aware of these medical standards and consider making a report where the patient is assessed as having an unacceptable level of risk to their driving ability. We are therefore concerned that introducing the mandatory reporting framework significantly shifts psychologists’ obligations from one of an ethical decision to a legal responsibility without sufficient evidence to justify such a fundamental change.

The APS has the following concerns with the proposed mandatory reporting framework:

- There is no clear evidence in the literature to support the position that mandatory reporting increases reporting by health practitioners.<sup>5</sup> The regulatory impact of mandatory reporting on health practitioners is therefore disproportionate.
- There is no clear evidence that mandatory reporting is effective in reducing the crash risk for drivers with relevant conditions.<sup>6 7 8</sup>

- While most health practitioners believe they have an ethical and professional responsibility to discuss the impact of medical conditions on their patient's fitness to drive, they do not consider reporting the patient to the driver licensing authority as their responsibility.<sup>5</sup> That is, in most jurisdictions, it is the licence holder's responsibility to inform the licencing authority if they are diagnosed with a permanent or long term medical condition or disability, not the responsibility of the health practitioner. Mandatory reporting significantly shifts the burden of responsibility to health practitioners. Doing so without a staged approach, and without appropriate resources, support and education to health practitioners being provided by government, would be inappropriate.

The APS is also concerned about the public health implications related to the proposed ACT mandatory reporting framework, for example:

- Loss of licence through injury or illness can have significant psychosocial impacts, such as loss of independence, social isolation, increased symptoms of depression, anger, stress, and a gradual decline in quality of life and general wellbeing. Research has found that a key factor in retaining dignity when transitioning from driving to non-driving is the person's capacity to maintain control over the decision.<sup>9</sup> The potential loss of licence through disproportionate regulatory action in the absence of actual injury or illness, would, in our view, have an even greater negative impact on the wellbeing of heavy vehicle drivers.
- Given this, health practitioners will be in a position of needing to support the negative psychosocial and health implications of driving cessation to address the potential consequences and ensure best outcomes for their patients.<sup>5 9</sup> The proposed framework does not recognise this increased burden on health practitioners, including psychologists, or try to mitigate its impacts.
- Loss of licence through injury or illness can have a potentially negative impact on the health professional-patient relationship. For example, there have been cases of abuse from patients towards health practitioners following a report to the driver licencing authority. Additionally, a patient may choose not to disclose certain symptoms related to an illness to their health professional due to fear of being reported and subsequently losing their licence. There is also the issue of 'doctor shopping'. That is, if the patient thinks they may be assessed by their health practitioner as being unfit to drive, they may shop around until they find a health practitioner that will not report them. Alternatively, the patient may avoid seeking treatment altogether if they believe a report will be made, which can compromise the patient's overall health.<sup>10 11 12 13 7</sup>

For these reasons, the APS does not support the Transport Canberra and City Services Directorate (TCCS) intention to introduce a mandatory reporting framework. Rather, the APS suggests that health professionals maintain an ethical obligation to support public safety by notifying the relevant authority if they have assessed a driver as being unfit to drive. Most health professionals are aware that they have a duty to the broader community, in terms of advising patients when they are not fit to drive, but also taking appropriate action with the relevant authorities if required. This can be further supported through appropriate educational measures developed together with professional organisations such as the APS.

In addition, the APS suggests that there are alternative approaches to managing the risks associated with fitness to safely operate a heavy vehicle. This includes appropriate policy measures being embedded within the *Heavy Vehicle National Law*, as well as heavy vehicle operators having strict internal fitness for duty policy for drivers. Additional road user behaviour strategies could also focus on increasing public awareness and education targeting heavy vehicle drivers, along with specific training for health practitioners regarding their existing obligations, in accordance with the AFTD Guidelines.

If the mandatory reporting framework were to be adopted in the ACT, we recommend the following:

- That the circumstances in which reporting is required should be clearly and as narrowly defined as possible in the legislation to enable psychologists to perform their primary task of providing treatment and support, rather than being co-opted into a regulatory role.
- Defining impairment to a higher standard than the 'reasonably likely ... to impair' approach proposed. This would minimise the risk that anyone with any moderate to severe psychological condition – including conditions which are successfully being treated – may be unfairly assessed as being impaired.

- The provision of advice and education to practitioners regarding their new responsibilities, including suggested assessment questions. Many health practitioners report having low confidence in their ability to assess fitness to drive, suggesting that the introduction of mandatory reporting legislation will require significant education and training for health practitioners.<sup>5</sup> An educational approach should be implemented ahead of, if not instead of, a legislative framework.
- Simplifying the reporting process as much as possible, for example, by having an online form which is co-designed with practitioners, rather than requiring psychologists to provide a written report to the RTA.
- The provision of co-designed resources (such as information sheets) for health practitioners to give to patients of concern. The appropriate provision of support and resources to health practitioners would help achieve the framework's aim that the legislative requirement 'may support health practitioners in explaining to their patients why a report was made'. Health practitioners otherwise would have a legislative responsibility to act in a potentially non-therapeutic way.
- Clarity regarding what happens after a report is made, and a commitment to ensuring that a report will not trigger punitive action against the patient. The APS would like reassurance that when a report is made it activates an appropriate risk-dependent response which is proportionate and, as much as possible, therapeutic.
- We would support legislative provisions that protect health professionals from civil and criminal liability when they may make such reports to driver licensing authorities without the patient's consent. We believe that where reports need to be made, psychologists should make the report with the consent of the patient and with the patient's knowledge of the intended action. However, we also understand that in some circumstances a report may need to be made without the patient's consent, but in good faith where it is a person is deemed unfit to drive.

Thank you again for the opportunity to provide feedback regarding the proposed mandatory reporting framework in relation to fitness to drive heavy vehicles. If any further information is required from the APS, I would be happy to be contacted through my office on (03) 8662 3300 or by email at [z.burgess@psychology.org.au](mailto:z.burgess@psychology.org.au)

Yours sincerely,

**Dr Zena Burgess, FAPS FAICD**  
Chief Executive Officer

## References

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